SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLANT,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T—14

JOHN P. BICKELL et al., Co-partners Trading and Doing Business under the Firm Name and style of Thomson & McKinnon and Alpheus C. Beane et al., Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

v.

J. M. LEE, as Comptroller of the State of Florida, Defendant

ORDER CONVOKING COURT UNDER SECTION 266 OF JUDICIAL CODE, REQUIRING DEFENDANT TO SHOW CAUSE WHY INTERLOCUTORY INJUNCTION SHOULD NOT ISSUE, AND GRANTING TEMPORARY RESTRAINING ORDER—Dec. 11, 1933

It having been made to appear from the verified bill of complaint in this above entitled cause that this suit is one in [fol. 3] which an interlocutory injunction is sought to restrain the enforcement and operation of Chapter 15,787, Laws of Florida, 1931 by restraining the action of a State officer, to-wit: the defendant Comptroller of the State of Florida, in the enforcement of such statute on the ground, among others, that the same violates provisions of the Constitution of the United States; and it further appearing from said verified bill that the threatened enforcement of said Florida statute by the defendant Comptroller, as alleged in said bill of complaint, through the collection of stamp taxes in the manner complained of in the bill of complaint under the construction of said statute as placed thereon by the defendant Comptroller will cause the plaintiffs to suffer loss and injury which will be irreparable, for the alleged reasons of unconstitutionality and for the reason that said injury cannot be adequately compensated for in damages, and this Court being of the opinion that such irreparable loss and damage would result to the plaintiffs unless a temporary restraining order be granted herein ex

parte to be effective until the time of the hearing and determination of the interlocutory injunction prayed for in said bill, and the plaintiffs having prayed for such temporary restraining order, and that a three-judge Court be convoked as contemplated in such case by Section 266 of the Judicial Code,

It is, Therefore, Ordered, Adjudged and Decreed as follows:

1. That the undersigned, the Honorable Wm. B. Sheppard, Judge of this above styled Court hereby calls to his [fol. 4] assistance to hear and determine the application for interlocutory injunction in this cause, the Honorable Nathan P. Bryan, Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Alexander Ackerman, Judge of the District Court of the United States in and for the Southern District of Florida.

2. That the defendant, J. M. Lee, as Comptroller of the State of Florida, be and he is hereby required to show cause, if any he has, on December 21st, 1933 in the Federal Courtroom in the City of Pensacola, Florida, at 10 o'clock A. M., why an interlocutory injunction as prayed for in said bill of complaint should not be issued herein.

3. That a temporary restraining order be, and the same is hereby made restraining the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or hereafter shall be made by the plaintiff brokers, or any of [fol. 5] their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered, or

shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

4. That this temporary restraining order shall become effective upon the filing in this cause of a bond of the firms of which the plaintiffs are members, to-wit, Thomson & McKinnon and Fenner, Beane & Ungerleider, signed for such firms respectively by a member of agent of the same, and which bond shall be made with good and sufficient surety to be approved by the Clerk or a Deputy Clerk of this Court, in the penal sum of $10,000 payable to the defendant, conditioned for the payment of such costs and damages as may be suffered by the defendant if it should be hereafter finally determined that this temporary restraining order was illegally or improvidently issued.

5. That the restraining order herein made shall remain in force only until the hearing and determination of the [fol. 6] application for interlocutory injunction herein, not to exceed ten days from this date, unless extended for like period within said time.

Issued and entered at Gainesville, Florida, at 1:30 P. M. O'clock this 11th day of December, A. D. 1933.

Wm. B. Sheppard, United States District Judge.

The following endorsement appears on the above and foregoing order:

This is to certify that a certified copy of the within temporary restraining order was served upon the defendant, J. M. Lee, as Comptroller of the State of Florida, by delivering such copy to him, this — day of December, 1933.

A. M. Lewis, United States Marshal for the Northern District of Florida, by T. H. Gilbert, Deputy Marshal.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF HEARING ON APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed Dec. 12, 1933

To the Honorable David Sholtz, as Governor of the State of Florida, and to the Honorable Cary D. Landis, as Attorney-General of the State of Florida, and to the defendant, the Honorable J. M. Lee, as Comptroller of the State of Florida:

You and each of you are hereby given notice, pursuant to the provisions of Section 266 of the Federal Judicial Code (Title 28 U. S. C. A. Sec. 380), that the District Court [fol. 8] of the United States, in and for the Northern District of Florida, has set for hearing and determination, in the federal courtroom in the Federal Building in the City of Pensacola, State of Florida, on the 21st day of December, 1933, at 10:00 o'clock in the forenoon of said day, the application for an interlocutory injunction in a suit brought by John P. Bickell, et al., Co-partners trading and doing business under the firm name and style of *Thomson & McKinnon*, and Alpheus C. Beane, et al., Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, against J. M. Lee, as Comptroller of the State of Florida, being cause No. T-14 in Equity in said Court, to enjoin the enforcement of Chapter 15,787, Laws of Florida, 1931, by enjoining the acts of the defendant Comptroller, and his agents, servants, employees and attorneys, from enforcing the said statute by the collection of any taxes therein provided for in respect of any of the matters and things complained of in the bill of complaint in said cause, and from enforcing any penalty set forth or provided for in said Act, on the ground, among others, that said statute violates the Constitution of the United States in the respects particularly set forth in said bill:

And that there is served upon you and each of you herewith and together with a copy of this notice and hereby by reference made a part of this notice, a true and correct copy of the original bill of complaint and of the exhibits

and of the affidavits attached to said bill, and a copy of the order of said District Court of the United States dated December 11, 1933, by which provision is made for the hearing of the application for an interlocutory injunction in [fol. 9] this cause and by which a temporary restraining order has been made and entered by said Court to be effective until the hearing and determination of the application for such interlocutory injunction.

Dated December 11, 1933.

Shutts & Bowen, by C. S. Carroll, Attorneys for Plaintiffs,

A copy of the foregoing notice of hearing and copies of the bill of complaint and of the order mentioned therein dated December 11, 1933, were received by the undersigned this 12th day of December, 1933.

David Sholtz, as Governor of the State of Florida; Cary D. Landis, as Attorney-General of the State of Florida, by J. V. Keen, Assistant Attorney General; J. M. Lee, as Comptroller of the State of Florida.

[fol. 10] IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T-14

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes and Benjamin E. Billings, Co-partners Trading and Doing Business under the Firm Name and Style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, John L. Julian, Earl H. Hulsey, John McCorkle, Robert A. McCord, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B. Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick and Hoyle

Jones, Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

vs.

J. M. Lee, as Comptroller of the State of Florida, Defendant

Bill of Complaint—Filed Dec. 11, 1933

To the Honorable Judges of the above styled court in equity sitting:

[fol. 11] Come now the plaintiffs, John P. Bickell, George B. Buchanan, Alfred W. Mansfield, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes and Benjamin E. Billings, Co-partners trading and doing business under the firm name and style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, John L. Julian, Earl H. Hulsey, John McCorkle, Robert A. McCord, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B. Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick and Hoyle Jones, Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, and bring this their bill of complaint against J. M. Lee, as Comptroller of the State of Florida, as defendant, and respectfully show unto this Court as follows:

1. That the citizenship and residence of the plaintiffs is as follows: the said John P. Bickell is a citizen of the Province of Ontario, Dominion of Canada, and resides in the City of Port Credit in said Province; the said George B. Buchanan is a citizen of the State of New York and resides in the City of Stony Point in said State; the said Alfred W. Mansfield is a citizen of the State of Illinois and resides in the City of Chicago in said State; the said Selden F. White is a citizen of the State of Illinois and resides in the City of Barrington in said State; the said Henry Holt is a citizen of the State of Indiana and resides in the City of Indianapolis in said State; the said William L. Meffert is a citizen of the State of New York and resides in the

City of Mount Vernon in said State; the said Alfred S. Rogers is a citizen of the Province of Ontario, Dominion [fol. 12] of Canada, and resides in the City of Toronto in said Province; the said Timothy P. Brosnan is a citizen of the State of New York and resides in the City of Bronxville in said State; the said Harold N. Scott is a citizen of the State of Illinois and resides in the City of Naperville in said State; the said John W. Jordan is a citizen of the State of Indiana and resides in the City of Indianapolis in said State; the said George H. Ross is a citizen of the Province of Ontario, Dominion of Canada, and resides in the City of Toronto in said Province; the said James A. Kiernan is a citizen of the State of New Jersey and resides in the City of Maplewood in said State; the said Henry T. Hermes is a citizen of the State of Illinois and resides in the City of Chicago in said State; the said Benjamin E. Billings is a citizen of the State of New Jersey and resides in the City of Morristown in said State; the said Alpheus C. Beane is a citizen of the State of New York and resides in the City of Bronxville in said State; the said Charles E. Fenner is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Joseph N. Carpenter is a citizen of the State of New York and resides in the City of New York in said State; the said R. Browder Flinn is a citizen of the State of New York and resides in the City of Bronxville in said State; the said John L. Julian is a citizen of the State of New York and resides in the City of New York in said State; the said Earl H. Hulsey is a citizen of the State of Texas and resides in the City of Dallas in said State; the said John McCorkle is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Robert A. McCord is a citizen of the State of Georgia and resides in the City of Atlanta in said State; the said Sully C. Pecot is a citizen of the State of New York and resides in the City of Forest Hills in said State; the said Alfred S. [fol. 13] Wyllie is a citizen of the State of New York and resides in the City of New York in said State; the said James P. Butler is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Leslie L. Vivian is a citizen of the State of New Jersey and resides in the City of Plainfield in said State; the said Hugh W. Long is a citizen of the State of New York and resides in the City of New York in said State; the said

Herbert R. Hastings is a citizen of the State of New York and resides in the City of Bronxville in said State; the said E. Wright Noble is a citizen of the State of Virginia and resides in the City of Gloucester in said State; the said Curtis B. Dall is a citizen of the State of New York and resides in the City of New York in said State; the said Victor B. Cook is a citizen of the State of New York and resides in the City of New York in said State; the said Norman Weiden is a citizen of the State of New York and resides in the City of Brooklyn, in said State; the said Louis W. Laudick is a citizen of the District of Columbia and resides in the City of Washington in said District of Columbia, and the said Hoyle Jones is a citizen of the State of Oklahoma and resides in the City of Tulsa in said State; that the defendant, J. M. Lee, who is joined herein as Comptroller of the State of Florida, is a citizen of the State of Florida and resides in the City of Tallahassee in said State, and is the duly elected, qualified and acting Comptroller of said State, and that the office of said Comptroller is located in the Capitol Building in said City and State.

2. That this is a suit of a civil nature in equity wherein the jurisdiction of this Court is invoked under Clause (a), Subdivision 1, of Section 24 of the Federal Judicial Code, on the ground that this is a suit wherein the amount in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000.00, and that the rights of the plaintiffs [fol. 14] are predicated on and arise under certain sections and provisions of the Constitution of the United States hereinafter specifically alleged, and that there exists herein a diversity of citizenship between the parties plaintiff and the party defendant, in that the plaintiffs and each of them, as hereinabove particularly alleged, are citizens of States other than the State of Florida or of foreign countries, and the defendant is a citizen of the State of Florida.

3. That the plaintiffs above named and described as composing the firm of Thomson & McKinnon (and hereinbelow sometimes referred to as "the firm of Thomson & McKinnon") are engaged in the business of acting as stock brokers, with their principal office and place of business in the City, County and State of New York, and with numer-

ous branch offices in other places including the State of Florida, in which State said firm does business through branch offices located in the Cities of Jacksonville, Miami, Miami Beach, Orlando, Tampa and St. Petersburg; that the plaintiffs above named and described as composing the firm of Fenner, Beane & Ungerleider (and hereinbelow sometimes referred to as "the firm of Fenner, Beane & Ungerleider") likewise are engaged in the business of acting as stock brokers, with their principal office and place of business in the City, County and State of New York, and with numerous branch offices in other places including the State of Florida, in which State said firm does business through branch offices located in the Cities of Jacksonville, Miami, Miami Beach, Palm Beach and Hollywood; that certain members of each of said firms are members in good standing of the New York Stock Exchange and other principal and leading Exchanges in said City and in other leading cities in the United States and in certain foreign countries, which constitute and are operated as markets for stocks, bonds and commodities; that the said firms do not do any business on any Exchange in the State of Florida; that the business of said firms is primarily that of acting as agents [fol. 15] for their customers in the capacity of commission brokers, and that said firms are not engaged in the business of floating or issuing stocks or securities or of underwriting the same; that the principal business of the said stock brokerage firms which is rendered for their Florida customers, by and through their said branch offices in said State, consists of acting as their agents and brokers in the making of purchases and sales on the New York Stock Exchange (and to a considerably lesser extent on other Exchanges, all of which are outside of the State of Florida); that in addition to acting as the agent of their Florida customers in such purchases and sales, the said firms furnish in their branch offices in said State complete stock market quotation information, which is furnished by them for the benefit of their customers, following its transmission from the New York Stock Exchange and the certain other Exchanges outside of the State of Florida, by a telegraph company, at a substantial expense to the plaintiffs.

4. That in representing their Florida customers through their Florida branch offices in the purchase and sale of stocks and securities on the New York Stock Exchange,

the practice and procedure of the said two firms of brokers is almost identical, and is substantially as follows:

(a) As to a purchase of stock for a Florida customer, the initial step in the transaction is the communication by the customer, either orally or in writing, that he desires the firm to purchase for him on the New York Stock Exchange a given number of shares of a listed stock at the market price or at a designated price. A form of such a request by a customer that a purchase be made on his behalf by the firm is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 1. Thereupon the employees of the firm in the Florida branch office in question communicate with the office of the firm in the City of New York by tele- [fol. 16] graph over American Telephone and Telegraph leased Morse wire, which service is leased for the exclusive use by the firm for its firm business, at a substantial expense to the plaintiff firm. Thereupon the plaintiff firm, through its employees in the New York office, proceeds to make the purchase requested in New York City, on the floor of the New York Stock Exchange, as the agent of their undisclosed principal, the Florida customer, by bidding for and obtaining an acceptance, or by accepting an offer of said stock, as instructed, and thereupon in New York City makes a Members' Contract, which is also designated as an Exchange Contract. That such contract under Article 15 of the Constitution of the New York Stock Exchange which governs and controls the trading thereon, is a contract of which the provisions and conditions of the Constitution of the Exchange and of the rules adopted pursuant thereto, constitute a part. That one of the terms of such contract, as provided by the Constitution of the said Stock Exchange, is that such contract shall be reduced to writing and exchanged between the seller and the purchaser on the day that the same is made. Accordingly, on the day of such transaction a written contract known as an Exchange Contract is passed between the parties, in the City and State of New York. A form of such Exchange Contract is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 2.

A further provision of such initial contract, as required by the Constitution and rules of said Exchange in such a transaction, is that the seller shall make actual delivery of such stock to the purchaser by 2:15 P. M., New York City time, the second delivery day after the date of the trans-

action, and that the purchaser shall pay the contract price therefor by such time. Each day that the Exchange is [fol. 17] open, except Saturday, is a delivery day.

As required under the Constitution and rules of said Exchange, and as a part of the contract resulting from such purchase transaction, the seller of said stock must deliver to the buyer thereof, at the time of delivery, a "sales ticket", which is a paper containing the date, the name of the seller, the name of the purchaser to whom the delivery is to be made, the number of shares and the nature of the security to be transferred, the price per share and the total consideration therefor; and there is thus required to be, and in fact in all such instances there is attached to such "sales ticket", before the same is delivered by the seller of such stock to the purchaser thereof, all stamps which as an excise on said transaction, are required by the laws of the United States and by the laws of the State of New York in which the said sale and transaction takes place. That by virtue of a Federal Stamp Tax Act (26 U. S. C. A. Sec. 901, being Sec. 800 of the Revenue Act of 1924, as amended by the Revenue Acts of 1926 and 1928) the terms and provisions of which, in respect to the requirement of revenue stamps in connection with sale and transfer of stocks, being almost exactly followed by the Florida statute hereinbelow referred to, require the use of stamps in a certain amount on each such transaction between the seller and the buyer, and the said stamps are placed on such "sales ticket" in full compliance therewith, and in compliance with the Rule of the New York Stock Exchange (Chapter III, Section 10) which reads in part as follows: "Each delivery of securities subject to a tax on transfer or sale must be accompanied by a sales ticket, stamped in accordance with the regulations of the United States and the State of New York. * * *"

That by a New York Statute (Sec. 270 of the Tax Law of the State of New York) a similar stamp tax is required by [fol. 18] that State as an excise tax upon such sales and deliveries made within said State, or on contracts or memoranda of sale which are made and delivered by the seller to the purchaser within that State, and that stamps are placed on the "sales ticket" delivered as aforesaid in connection with such a transaction taking place in the City of New York, in full compliance with the said New York State Stamp Tax Law, and in compliance with the aforesaid rule of the Exchange. An example of such "sales ticket" is shown by

one such "sales ticket" which is attached hereto, made a part hereof, and marked Plaintiffs' Exhibit 3, which was delivered to the said firm of Thomson & McKinnon in an actual transaction on October 17, 1933, and to which there were affixed and cancelled, as now appearing thereon, such documentary stamps as were required by the said Federal and New York State Stamp Tax Laws. Said stamped "sales tickets" do not come into Florida.

In the case of all such purchases and sales, however, delivery of the stock is made in the State of New York between the floor members or brokerage firms who take part in such transaction; that such delivery under the rules of said Stock Exchange is made simultaneously with payment in full, and is made either by the actual delivery of certificates of stock or by corporate transfer thereof; that the brokerage firm purchasing said stock in New York City completes the purchase transaction by receiving delivery, in New York City, as the agent of and for and on behalf of the Florida customer who requested such purchase to be made for him.

That following the making of such purchase transaction on the floor of said Exchange, the employees of the said brokerage firm in New York City communicate by telegraph over said private wire facilities, with their employees in [fol. 19] the branch office in Florida, in which said request for the purchase originated. In the latter office said telegram is received in original and copy form, and though under no obligation with the customer by contract or otherwise to deliver such telegraphic communication to the customer, the employees of the firm in said Florida branch office customarily deliver to the purchasing customer the original or a carbon copy of the telegraphic message showing that his request for such purchase has been complied with by the said firm of brokers; that such telegraphic notice sets forth the date of its receipt and information that a certain number of shares of a certain security have been bought at a certain price, and it contains the number of the customer's account in said brokers' office, and the time of the day at which the transaction was made. A form of such telegram is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 4. As an additional notification by such brokerage firm of New York City to its customer who placed his request for a purchase with the Florida branch of the firm, there is mailed to him from the New York office of said

firm on the day of the transaction, a form notice showing that the requested transaction was made, and giving the details thereof, including the name of the seller, the number of shares, the name of the security, its price per share, the amount of the commission, the total consideration and the name of the customer. A form of such mail report from the brokerage firm to its principal is hereto attached, made a part hereof and marked Plaintiffs' Exhibit 5.

(b) As to a sale of stock for a Florida customer; the initial step is a request made by the customer in Florida, either orally or in writing, to the employees of the Florida [fol. 20] branch office that the firm sell on the New York Stock Exchange a given number of shares of a listed stock at the market price or at a certain designated price. A form of such request for the sale of stock is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 6. A telegraphic communication, as alleged above in the case of a purchase, is made by the Florida employees of the firm to its New York office and a transaction as in the case of a purchase is thereupon made by the employees of the New York firm, in New York City, on the floor of the Exchange whereby a similar contract is made by said brokerage firm for and on behalf of the Florida customer as their undisclosed principal, with a fellow member or authorized trading firm on said Exchange, which is likewise representing some undisclosed purchaser-principal. As a result of the transaction and contract thus made, and by its terms as contained in the Constitution and rules of the said Exchange, a written contract or memorandum known as an "Exchange Contract" is delivered in New York City by the plaintiff firm to the purchaser broker or brokerage firm on the day of the transaction, which sets forth the name of the purchasing firm, the number of shares and nature of the security, the price per share and the total consideration. An example of such an Exchange Contract is hereto attached, made a part hereof and marked Plaintiffs' Exhibit 7.

Following the making of such floor trade or transaction on the Exchange in New York City, the employees of said firm in that City notify the employees in the Florida branch, to which the customer made such request for the sale, that such request has been complied with. The telegraphic communication to the Florida branch office of the firm sets forth [fol. 21] the information that there has been sold the re-

quested quantity of the named stock at a certain price, and contains the customer's account number and the time and date of the transaction. Such telegram is taken off the wire by typewriter in the firm's Florida branch office in question by the employees of the firm, and it is then customary for the Florida branch office to notify the customer that his requested sale has been made in New York City. This notification is given to him either by informing him orally or by delivering to him either the original or a carbon copy of the telegraphic report to such effect, received from the New York office. An example of such notice or telegraphic report, which is complete and similar in all material respects to those which are sent from New York to the Florida branch office in all such transactions, is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 8.

The customer may or may not receive such information from the branch office, as there is no contract or other obligation to deliver the same to him, and by reason thereof it has always been and is now the practice of the New York office, on the day of each such transaction, to mail to the Florida customer a brief report showing that they have complied with his request for such sale. The form of notice thus mailed to the customer sets forth the name of the person to whom sold, the number and kind of securities, the price per share and the total price, plus the additional figures showing the amount of the commission, the amount of the New York State and Federal stamp taxes to be paid thereon, the net proceeds of the sale, and the name of the Florida customer. An example of such a report which is [fol. 22] mailed by the brokers from New York to their Florida customers, is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 9.

That in connection with the actual delivery by 2:15 P. M. on the second delivery day following such transaction, which delivery is made as aforesaid in all such purchases and sales, the plaintiff firm as seller delivers in New York City to the purchaser there a "sales ticket" after first affixing thereto and cancelling documentary stamps in the form and amount required in connection with said transaction by the above mentioned Federal and New York State Excise or Stamp Tax Laws; an example of such "sales ticket" (the stamps, however, not appearing thereon) is hereto attached, made a part thereof and marked Plaintiffs' Exhibit 10.

That as a final step in the sale transaction a delivery of the stock is made in New York City (by actual delivery of the certificates or by transfer on the corporate records) by the plaintiff firm as the customer's agent and for and on his behalf to the other party to said sale, to-wit: the purchaser.

5. That the method and procedure as above outlined, by which purchases and sales of securities listed on the New York Stock Exchange are made in the City of New York for their Florida customers, is that which is employed in the vast majority of transactions for their said customers, and that where such sales and purchases are made on different bases which are recognized and permitted by the Constitution and Rules of the New York Stock Exchange, such differences are immaterial and bring about a different contact and different time of delivery and payment without any [fol. 23] material change in the manner of handling the deal, in that all such New York Stock Exchage transactions are made and completed by contract and delivery in the State of New York, and upon the delivery of a "sales ticket" or memorandum which passes between the buyer and the seller in that State and to which the required Federal and New York State revenue stamps are duly affixed. That in handling purchases and sales of securities on Exchanges other than the New York Stock Exchange, the plaintiff firms handle and accomplish them in all material respects similar to the manner hereinabove outlined as being the method employed by them on the New York Stock Exchange.

6. That except as to arrangements which the Florida branch office makes with certain of its Florida customers to act as their agents and brokers for the purchase or sale of stock on a marginal basis, as hereinbelow alleged, the arrangement made between the brokers and such customers is a simple agency contract whereby the said firms of brokers undertake for their Florida customers to act on the various Exchanges outside the State of Florida as agents of undisclosed principals in purchasing and selling stocks, securities and commodities which their customers shall request them to buy or sell, as the case may be. That by express understanding with the customer, and by custom and usage in the trade, and through the necessity of complying with the rules and requirements of the various Exchanges on which

such transactions are made, said firms of brokers on all such transactions (except the marginal transactions hereinbelow mentioned) require that a customer requesting them to purchase for him any stocks or securities, shall first deposit with said firms of brokers an amount sufficient to pay the full purchase price thereof plus the commission and expenses incident to the transaction. And, correspondingly, [fol. 24] where a purchaser request said firms to make a sale of stocks or securities on his behalf, he is first required to furnish to said firms of brokers the stocks or securities which can be delivered by the plaintiff brokers on making such sale, or to deposit with said firms of brokers an amount sufficient to cover the cost of stock which will be necessary to obtain and deliver in said transaction, and also to cover the commission and expense of the transaction.

7. That so-called marginal accounts are granted to customers, but are limited to dealings in stocks in excess of a certain value, which are duly and regularly listed stocks on the principal Stock Exchanges. That an example of such marginal account agreement which is made between the said firm of Thomson & McKinnon and its Florida customers, is shown in the printed "Customer's Agreement and Consent" which is attached hereto and made a part hereof, and marked Plaintiffs' Exhibit 11, reference whereto is hereby prayed as to the provisions thereof. That the terms, provisions and conditions therein contained are in substance similar to the arrangements between the said firm of Fenner, Beane & Ungerleider and its Florida customers as to such marginal accounts. That in purchasing and selling stocks for the customer on the marginal basis, the stock is held by the brokers for their protection, and an amount of money is required to be kept on deposit with the brokers, sufficient to comply with the Constitution and Rules of the New York Stock Exchange relating thereto, and that transactions made for such a customer on a marginal account are not in any substantial respect different from the purchases and sales which the said brokers make for customers not having such marginal accounts, except that instead of requiring a sufficient monetary deposit to cover the full price of stocks to be pur- [fol. 25] chased and sufficient to cover the full price of stocks to be delivered on sales, the balance between such amounts and the marginal deposit is loaned or advanced to

the customer against the stocks of his account held by the broker or other lending agency.

8. That the representation of the Florida customers contemplates and requires in all purchases and sales, whether on such a marginal basis or otherwise, that an actual delivery of stock be made at the place where the sale is made, outside the State of Florida. That where a sale is made by the plaintiff brokers for Florida customers, no contract for such sale is ever made or delivered to the purchaser in the State of Florida, and no memorandum of sale is ever made or delivered to the purchaser in the State of Florida, and no delivery of any such stocks or securities is ever made to the purchaser in the State of Florida. That where the said firms of brokers represent Florida customers in the purchase of stocks and securities on such Exchanges outside the State of Florida, they do not make or receive any contract for such purchasers within the State of Florida, and no memorandum of sale is delivered by the seller to the said plaintiff brokers or their customers in or within the State of Florida, and there is not delivered to the said brokers in the State of Florida any shares of stock or certificates or other evidences of delivery or transfer of title to any such stocks so purchased by them outside the State of Florida.

9. That the complete accounting and book records of the transactions of said firms for their Florida customers are kept and maintained in the New York City offices of said firms and accurately reflect the balances to the credit of the customers, and any and all securities held for their account; that the records of such matters as contained in the Florida branch offices of said firms are not complete and [fol. 26], are merely approximations for the convenience and benefit of said customers; that monies held by the brokers for the account of said customers are held in New York or where certain portions thereof are on deposit in banks in the cities where the said Florida branches are located, the same are subject to disposition by the New York offices of said firms.

10. The handling of such purchases and sales by the said firms of brokers for Florida customers requires the trans-

mission of information and intelligence relating thereto from the State of Florida to the State of New York over leased facilities of telegraph companies likewise engaged in interstate commerce, and the said requests for purchases and sales and the reports of the resultant purchases and sales are substantially the same information which the person in Florida would exchange by telegraph or telephone between Florida and New York, should he desire to make a purchase on the New York Stock Exchange without using the convenience and facilities afforded by the branch offices of said firms in his State.

11. That a substantial portion of the Florida business of said firms is for customers who do not use marginal accounts: That in a large majority of all such purchases and sales for customers not using marginal accounts, the stock purchased or sold is actually transported between the States of Florida and New York. In the case of such purchases, the stock is forwarded to the purchaser by the broker following the purchase of the same on the foreign Exchange, and in the case of such sales, the stock is forwarded from Florida to New York to comply with delivery requirements in connection with the sale to be made in New York State. That in representing its customers in such transactions and in sending such stocks and securities between Florida and New York, the said brokerage firms [fol. 27] are performing a service for their customers which is covered by the commission charge made for the sale or purchase transaction in question, and that in so transmitting said messages and information from Florida to New York, and from New York to Florida, and in so shipping and transferring said stocks or securities for their customers between those States (and between Florida and other States in which Exchanges so dealt on are located) the said firms of brokers are engaged in commerce between the States and in commerce between the State of Florida and certain foreign countries.

12. That the 1931 Session of the Legislature of the State of Florida enacted Chapter 15,787 (Section 1279, Subsections 111-117, C. G. L., Fla. 1932 Supp.) entitled "An Act Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax". That by the third paragraph of Schedule A of Section 2

of the said Act there is imposed a stamp tax, which by that portion of the Act, it is provided shall apply to actual sales and transfers of stock or to contracts entered into between sellers and purchasers thereof, or to memoranda of sale which are delivered by the seller to the purchaser. The said paragraph of the Act likewise fixes a penalty, by providing that any seller liable to pay the tax or his agent or broker who carries out such a sale or delivers to the purchaser any memorandum of sale, without having the proper stamps affixed thereto, with intent to evade the provisions of the Act, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly. By Section 7104, C. G. L., Fla. 1927, the punishment for such misdemeanor is provided to be a fine not to exceed $200.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the Court.

[fol. 28] 13. Section 2 of the said Florida Stamp Tax Statute provides that the administration of the Act shall be invested in the Comptroller of the State of Flor-da, who is thereby directed to administer and enforce the taxes levied and imposed by the Act. The said Comptroller by such Section of the Act is given power to enter the premises of any taxpayer and examine the taxpayer's records bearing upon the matters to which the Act pertains.

14. That when the said Stamp Tax Act went into effect in the year 1931 the then Comptroller of the State of Florida (to whose office the defendant Comptroller J. M. Lee succeeded in January, 1933) construed said Act as not applying to the sales or purchases of stock which were made outside the State of Florida as hereinabove alleged, through brokers such as the plaintiffs, nor to any notices or any written requests for purchase or the sale of stock, given by the customers to said brokers, nor to any written statements given by such brokers to their Florida customers, advising the latter that contracts had been made in New York City and there executed for them, nor to any other accounts or papers or memoranda or records of the said brokers made or used in the State of Florida or exchanged between them as agents and their Florida customers as principals. That, accordingly, no tax was required to be paid by reason of or as a result of the pur-

chases and sales of stocks which the plaintiff brokers made on various Exchanges outside the State of Florida for their Florida customers.

14 (a). That plaintiffs further allege and show unto this Court that the meaning and intent of the said Florida Stamp Tax Act and the proper construction thereof in respect to the matters referred to in this bill, was and is that such tax shall apply only to any sale of stocks which sale actually takes place in the State of Florida, or to any contract for the sale of stock, which contract is made and [fol. 29] delivered in the State of Florida by the seller to the purchaser of the stock, or any memorandum of sale of a contractual nature which is actually delivered within the State of Florida by the seller of the stock to which it refers to the purchaser thereof and which memorandum passes between the said parties to the sale as an instrument obligating the seller on the one hand to make delivery and which has the effect in the hands of the purchaser of a binding instrument by virtue of which he can enforce delivery to him of such stock. Plaintiffs further show unto the Court that written notices or memoranda or other papers delivered by a purchaser or seller of stock to his agent, requesting such agent to make a purchase or sale on that principal's behalf, or which are delivered by the agent to his principal showing that the requested sale or purchase has been made outside the State of Florida with a third party by the agent for the principal as requested, or records which the agent may keep of such purchases and sales made by him outside the State of Florida, are not taxable under the said Florida Stamp Tax Act, for the reason that such papers and memoranda are not within the class of documents upon which said statute imposes a tax, in that among other things they are not papers or instruments which pass from the seller to the purchaser in connection with a sale of stock, and for the reason that the language of the statute and its proper construction excludes such papers and memoranda of sales from taxation thereunder.

15. That on the 23d day of November, 1933, the defendant Comptroller of the State of Florida appeared at the branch offices of each of the plaintiff brokerage firms located in Jacksonville, Florida, and demanded that documentary stamps, in an amount based upon the number of [fol. 30] shares of stock involved, be placed upon all written

requests which the customers, as principals, should make of the said firms of brokers as their agents to either buy or sell stock for them on Exchanges outside the State of Florida, and on all of the telegraphic messages which the employees of the Florida branch offices of the said brokerage firms should receive from the New York offices of the firms and deliver to the Florida customers, by which the said firms, as agents, informed the said customers, as principals, that the requested purchase or sale had been made as the customer had directed. That the said defendant Comptroller then took, and since that time has taken, the position that the said communications between the said brokers and their principals are taxable under said Act, and that the records which said branch offices keep of the sales and purchases their firms made, in States other than the State of Florida, for and at the request of their Florida customers, are taxable under said Act, and the said Comptroller is threatening to enforce the payment of such taxes in such manner, by virtue of the enforcement and penalty provisions of said Act.

16. That if the said Florida Stamp Tax Act be construed according to the contentions of the defendant Comptroller of the State of Florida, it violates the provisions of the Constitution of the United States in the following respects: the levy and collection of such tax, as so demanded and threatened by the defendant Comptroller of the State of Florida, from the Florida customers of the plaintiff brokers, or by requiring the same to be paid by the plaintiffs under said Florida Documentary Stamp Tax Act of 1931, under the circumstances and conditions which are hereinabove and hereinbelow alleged in this bill of complaint, render said Act unconstitutional as a violation of the Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3) by constituting a direct burden on the interstate commerce in which the plaintiffs are engaged, as hereinabove alleged, and as a violation of the First Section of Article 14 of the Amendments to the Constitution of the United States, as depriving the plain-
[fol. 31] tiffs of their property without due process of law, and by denying to them within the jurisdiction of the State of Florida the equal protection of the laws.

17. That if the said Florida Stamp Tax Act be construed according to the contentions of the defendant Comptroller

of the State of Florida, it violates the Constitution of the State of Florida, in that wherein said Act purports to require the levy and collection of such a tax from the customers of the plaintiff brokers, or requires that the same shall be paid by the plaintiffs, under the circumstances and conditions hereinabove and hereinbelow set forth in this bill, and in the manner and respects as to which the same has been demanded and threatened by the said Comptroller, it violates the Twelfth Section of the Declaration of Rights of the State of Florida by depriving plaintiffs of their property without due process of law, and the First Section of Article 9 of the Constitution of said State as levying a tax in the guise of an excise tax, which is in effect a property tax without the equal rate of taxation and just valuation of the property taxed as guaranteed by such provision of said State Constitution, and by purporting to levy an excise tax on acts and transfers beyond the jurisdiction of the State of Florida, and as to which it has no constitutional power to so tax, and by violating the Sixteenth Section of Article 3 thereof, by failure to have the true nature of such tax expressed in the title thereof.

That said defendant Comptroller of the State of Florida has threatened as aforesaid to proceed to enforce said Act by requiring the plaintiffs or someone on their behalf to pay such tax by affixing stamps upon the said communications between plaintiffs as agents and their customers as principals, and upon the records which they have kept for the benefit of their customers of the purchases and sales of stocks and securities outside the State of Florida which they have made for their said customers, and that said Comptroller has ad-
[fol. 32] vised the plaintiffs through certain of their employees in the State of Florida and through their counsel in said State that said Act will be enforced by him retroactively as well as in the future unless by December 9, 1933, the plaintiffs shall have paid such tax on all items so contended by the Comptroller to be taxable thereunder, beginning as of November 23, 1933, and unless such payments be continued.

18. That said demand is made notwithstanding the rule of the New York Stock Exchange (similar in substance to such rules of other Exchanges outside the State of Florida on which the plaintiffs deal for Florida customers as aforesaid), which provides as follows: "No member shall, di-

rectly or indirectly, by agreement or otherwise, assume or bear for his own account or relieve his principal from any part of any stamp tax imposed by the United States or by any State on transfers or sales of securities." That said rule is Rule No. 12 of Chapter VII of the rules of said Exchange. That for the plaintiffs to comply with the demands of the defendant Comptroller by paying said tax would be a violation of said rule for which they could not be excused. That for the plaintiffs to require as a condition of representing principals in such transactions that their said Florida customers pay such tax as demanded by the said Comptroller would result in such loss of business that they would be unable to maintain and operate branch offices in the State of Florida, and would be forced to cease doing such business in said State, and that a like effect would be had upon the business of all other stockbrokers similarly situated engaged in representing Florida customers through branch offices in the State of Florida.

19. That plaintiffs have no plain, adequate or complete remedy at law, in that even if there should exist on the law side of this Court a right in the plaintiffs to recover back amounts paid through such stamp taxes in the event the [fol. 33] same should be found to have been illegally levied or collected, the said remedy would require a multiplicity of suits, in that the payment of each such tax would be a separate transaction, and in that the nature of the tax is one which would require of plaintiffs hundreds of tax payments daily, and that the requirement to pay such taxes would continue from day to day; that said remedy would not be plain, adequate or complete, in that the loss and damage which would be suffered by the plaintiffs, by reason of the enforcement of said Stamp Tax Act, as threatened, could not be measured by the amount of taxes so paid, but would be measured by the loss of their business in the State of Florida and the value of the goodwill of their customers which would be lost thereby, and by plaintiffs being deprived of conducting and increasing their business in the State of Florida, and would be measured by the loss upon their property investment in said State, all of which loss thus occasioned would amount to hundreds of thousands of dollars.

20. That no plain, adequate or complete remedy at law could be afforded by permitting an arrest of the plaintiffs or their Florida servants to be made in the State of Florida,

and by thereupon testing the legality thereof, in that, under the construction of said Act placed thereon by the Comptroller, the violations thereof, for which such arrests might be made, could number several hundred each day, and the enforcement of said Act by arrest would cause a multiplicity of such suits; that to test the legality of any such criminal prosecution could reasonably require one or more years for its completion, and would leave plaintiffs or their servants and employees subject to daily hourly arrests in such manner that it would be impossible for them to continue their business under such circumstances.

21. That the multiplicity of suits, both civil and criminal, [fol. 34] to which the plaintiffs would be required to resort to protect themselves and their servants in the conduct of their said business, in order to test the validity of the Act, if said Act should be enforced upon the construction placed thereon by the defendant Comptroller, would render it unprofitable for plaintiffs to continue in the conduct of their said business and would make it impossible for their employees to continue to perform their duties through being constantly harassed by multiple arrests, and would deprive their Florida customers of the representation which they are being afforded by the plaintiffs, and would cause undue expense and hardship upon the plaintiffs.

22. That the enforcement of said Act against the plaintiffs, as the same is construed by the defendant Comptroller, would result in irreparable injury to the plaintiffs by reason of the matters and facts alleged in this bill, and particularly in that the Florida business of the plaintiff brokerage firms is of substantial value to them far in excess of $3,000.00, and that said Florida business would be destroyed; that by being required to terminate their business in Florida through such enforcement of said Florida Stamp Tax Act, the plaintiffs would likewise suffer irreparable injury in the loss of goodwill, in that they would not be able, as formerly, to serve their customers from other States while such customers are visiting in Florida, as is done annually by many of their valued customers, and by being unable to serve their customers who are residents of the State of Florida, and by loss in value of the properties in which they have invested and which are being used by them in the conduct of their business in Florida, the total

value of which runs into hundreds of thousands of dollars and a considerable portion of which property could not profitably be transported for use elsewhere nor profitably put to any other use than that to which it is being put by them in their business.

[fol. 35] 23. That the said Comptroller having threatened as aforesaid, to enforce said Act in the manner hereinabove alleged, will proceed to avail himself of the provisions of the laws of the State of Florida for the enforcement of collection of taxes, and the provisions of said Stamp Tax Act as to the collection of taxes required to be paid thereunder, and the penalties provided for therein, unless enjoined by this Honorable Court.

24. That by reason of the matters and things hereinabove alleged, and by reason of the fact that the construction of said Act placed thereon by the Comptroller of the State of Florida, would require the payment of taxes daily during the time between the filing of this suit and the hearing and determination, after due notice to the defendant, of an application for the interlocutory injunction hereinbelow prayed for, and would leave the plaintiffs' employees in their said Florida branch offices subject to multiple arrests and criminal prosecutions pending said hearing for an injunction, irreparable loss and damage will result to the plaintiffs unless a temporary restraining order should be granted as hereinbelow prayed for.

Wherefore, the plaintiffs pray as follows:

1. That upon the filing of this bill and the presentation thereof to this Court, an order be entered herein, convoking a three-judge Court for the hearing of the application for the interlocutory injunction herein prayed for, and for the hearing of this cause on final hearing, as provided for by Section 266 of the Judicial Code (Title 28, U. S. C. A. Sec. 380), by virtue of the showing in this bill that the same seeks an interlocutory injunction restraining the enforcement of a Statute of the State of Florida (Chapter 15,787, Laws of Florida 1931) by restraining the action of the defendant Comptroller of the State of Florida, an officer of said State, in the enforcement of said Statute, [fol. 36] upon the ground that the same violates provisions of the Constitution of the United States.

2. That forthwith upon the filing of this bill, a temporary restraining order be entered herein ex parte, to remain in force until the hearing and determination of the application for interlocutory injunction hereinbelow prayed for, and which temporary restraining order shall restrain the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, from enforcing the said Florida Statute (Chapter 15,787, Laws of Florida, 1931) against the plaintiffs in any manner whatsoever with respect to the matters and things alleged in this bill of complaint, by the collection of taxes or the imposition or enforcement of penalties thereunder.

3. That an interlocutory injunction be made and entered pendente lite in this cause, enjoining and restraining the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or hereafter shall be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered, or shall request or order the same to be made, and from levying [fols. 37-39] any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales have been or shall be made by them in accordance with the requests, directions or orders to them by their customers; and restraining the said defendant and his agents, employees and attorneys, from enforcing or causing to

be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

4. That upon final hearing the interlocutory injunction herein prayed for be made permanent.

5. That the plaintiffs be granted such other and further relief in the premises as to the Court shall seem meet and proper.

Shutts & Bowen, by (Signed) Charles A. Carroll,
Attorneys for Plaintiffs.

Duly sworn to by E. W. Griffin and Kingman Moore. Jurats omitted in printing.

PRIVATE WIRE Time

THOMSON & McKINNON

Nov 8 1933

BUY 100 USSTEEL

43

#2437

JOHN JONES

5
1033 AMF

PLAINTIFFS' EXHIBIT 1 TO BILL OF COMPLAINT

No. 71 New York 193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & MCKINNON

Receive From
(Deliverers Name and Number Stamp)

BROKER	Line No.	RECEIVE FROM	SHARES	SECURITY	PRICE	AMOUNT
	1	BROWN & BLACK	100	X U S STEEL	46	4600 00 1

Deliverers Line No.

PLAINTIFFS' EXHIBIT 2 TO BILL OF COMPLAINT

No. 20 New York, Oct 17 1933 19

M. J. MEEHAN & CO. 61 Broadway
Subject to the Revenue Act of 1921 and Regulations made in accordance therewith.

SOLD TO

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT
	292	THOMSON 1	00	C V 36		3600 00 5 00

426

Receivers Line No.

U S Internal Revenue Documentary Stock Transfer Stamp 5 dollars

M J M E H A N & Co

State of New York 5 4 4 Stock Transfer Tax

PLAINTIFFS' EXHIBIT 3 TO BILL OF COMPLAINT

29

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19___

Bought 100 X. 43
#2437
127Amf

PLAINTIFFS' EXHIBIT 4 TO BILL OF COMPLAINT

Stock
Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York,_____193

We have this day bought for your account and risk on the New York Stock Exchange

BROKER	Line No.	OF WHOM BOUGHT	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.			TOTAL AMOUNT	FOR WHOSE ACCOUNT
	1	BROWN & BLACK	100	X	U S STEEL	46	460000	1500			461500	JOHN DOE

E. & O. E.

Thomson & McKinnon

Per_____

PLAINTIFFS' EXHIBIT 5 TO BILL OF COMPLAINT

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933.

SELL 100 US STEEL 43 1/4

#2185

William R Smith

#116
1022A

PLAINTIFFS' EXHIBIT 6 TO BILL OF COMPLAINT

No. 71 New York,_____193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON

Deliver to_____
(Receivers Name and Number Stamp)

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT	
	1	SMITH JONES	100	X U S STEEL	461/8	461250	1

Receivers Line No.

PLAINTIFFS' EXHIBIT 7 TO BILL OF COMPLAINT

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19____

Sold 100 X 43 1/4

#2185

1103amf

PLAINTIFFS' EXHIBIT 8 TO BILL OF COMPLAINT

Stock Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York_____193

We have this day SOLD for your account and risk on the New York Stock Exchange

BROKER	Line No.	TO WHOM SOLD	SHARES	ABBREV	DESCRIPTION	PRICE	AMOUNT	COMM.	STATE	FEDERAL	TOTAL AMOUNT	FOR WHOSE ACCOUNT
	1	SMITH JONES	100	X	U S STEEL	461/8	461250	1500	400	500	458850	RICHARD ROE

Thomson & McKinnon

E. & O. E.

Per_____

PLAINTIFFS' EXHIBIT 9 TO BILL OF COMPLAINT

No. 71

New York,_____193

THOMSON & McKINNON
11 Wall Street New York

Subject to the Revenue Act of 1926 and Regulations made in accordance therewith.

SOLD TO_____

BROKER	Line No.	DELIVER TO	SHARES		SECURITY	PRICE	AMOUNT
1		SMITH JONES	100	X	U S STEEL	461/8	461250

Receivers Line No.

PLAINTIFFS' EXHIBIT 10 TO BILL OF COMPLAINT

[fol. 44] PLAINTIFFS' EXHIBIT 11 TO BILL OF COMPLAINT

Thomson & McKinnon

Customer's Card

Form 64

Date —— —, ——.

Code: —.

Name of Customer: —— ——.

Business Address (No.): —, (Street): —, (City and State): —.

Residence Address (No.): —, (Street): —, (City and State): —.

Business Telephone No. —. Residence Telephone No. —.

Occupation (Name of concern, nature of its business and position held): —.

All communications to the undersigned are to be sent to —.

Customer's Agreement and Consent

Messrs. Thomson & McKinnon.

DEAR SIRS: In consideration of your opening an account with the undersigned, or continuing an account with the undersigned in case such an account has been heretofore opened, and for other valuable considerations, it is agreed between us and the undersigned consents as follows:

1. Every transaction is subject to and in accordance with the constitution, by-laws, rules, regulations, directions, requirements and customs (including all changes, amendments or additions therein or there to which may affect such transaction) of the exchange, board of trade or other market on which such transaction is executed or is intended by you to be executed and of the clearing corporation, clearing house or other association, body or institution performing similar functions connected therewith, as well as of all committees, boards and other bodies, officials and authorities thereof, or if any transaction is not executed or intended by you to be executed on any such exchanges, board of trade or other market, then such transaction shall

be subject to and in accordance with the usages and customs prevailing among brokers with respect to similar transactions.

2. Every transaction involving future delivery is entered into with the distinct understanding that actual delivery is contemplated and intended.

3. You shall not be required to execute any order or to comply with and direction of the undersigned if in your opinion the state of the account or accounts of the undersigned does not justify such execution or compliance.

4. Whenever you may have in your possession or under your control, stocks, bonds or other evidences of debt of a corporation, company or association, or other securities, belonging to the undersigned or deposited with you by or for the account of the undersigned, on which you have a lien for indebtedness due to you by the undersigned, then without notice to the undersigned, you may pledge the same [fol. 45] or any part thereof for the amount due to you thereon or for more or less than said amount, either separately or together with other securities, and/or you may loan the same or any part thereof either separately or together with other securities. Any or all securities held by you as collateral or margin in connection with any "short" sale or sales for the account of the undersigned, may without notice to the undersigned be pledged by you as security for any amount either separately or together with other securities and/or may be loaned by you either separately or together with other securities.

5. Whenever you shall deem it necessary for your protection by reason of insufficiency of margin or otherwise, then you may for the account of the undersigned, without demand for additional margin, without tender, without advertisement and without notice to the undersigned, all of which are hereby waived:

(a) sell any or all securities held or carried by you for the account of the undersigned, and/or sell or contract to sell any or all commodities which you have purchased or contracted to purchase for the account of the undersigned; and/or

(b) purchase any or all securities necessary to repay loans of securities in connection with "short" sales made

by you for the account of the undersigned, and/or purchase or contract to purchase any or all commodities which you have sold "short" or contracted to sell "short" for the account of the undersigned;

and any or all such sales, purchases and contracts to sell or purchase may be made on any exchange, board of trade or other market, at any broker's board or at any public or private sale. If any such sale be at any brokers' board or at public auction, you may yourselves purchase thereat, free from any right of equity or redemption of the undersigned, which is hereby waived and released. No demand, tender, advertisement or notice, which may be made or given by you, shall be deemed a waiver of your right to take any action which you are herein authorized to take without demand, tender, advertisement or notice.

6. Any and all securities, commodities, contracts for the purchase or sale of commodities, credit balances and other property held or carried by you for the account of the undersigned, including securities held for safekeeping, shall constitute collateral security for any and all of the obligations of the undersigned to you, however arising, and in whatever account appearing and you may without notice to the undersigned transfer any and all securities held by you for safekeeping to any account in which there is a debit balance representing indebtedness of the undersigned to you, to be held as margin in such account. Whenever the undersigned shall carry more than one account with you, you may at any time without notice to the undersigned charge any one or more of said accounts with any sum upon crediting any other of said accounts with the same sum.

7. Interest on debit balances in every account of the undersigned is to be charged by you, and in addition you may charge to the undersigned a reasonable commission for the use of your credit in connection with any indebtedness incurred by you in whole or in part for the account of the undersigned or in connection with the financing of transactions for the undersigned, and the undersigned will be liable to you for all amounts so charged.

[fol. 46] 8. In case you shall sell for the account of the undersigned any securities and the undersigned shall fail

to deliver such securities to you in time to enable you to make delivery thereof to the purchaser within the time required for such delivery, or in case you shall be required or shall consider it advisable (whether by reason of the requirements of any exchange, board of trade, other market or otherwise) to replace any securities theretofore delivered by you for the account of the undersigned with other securities of like or equivalent kind and amount, then in any such event you may without notice to the undersigned, borrow for the account of the undersigned other securities of like or equivalent kind and amount and deliver the same to such purchaser or other party to whom delivery is to be made and you may subsequently repay the loan thereof with securities purchased or otherwise acquired by you for the account of the undersigned, or at your option instead of borrowing such other securities of like or equivalent kind and amount you may without notice to the undersigned purchase the same for the account of the undersigned and make delivery thereof to such purchaser or other party to whom delivery is to be made, and in the event of any such transaction the undersigned will be indebted to you for any and all expense, loss, damage and liability incurred by you in connection therewith.

9. You shall be under no obligation to deliver the same certificates or securities deposited with you or received by you for the account of the undersigned, but may deliver other certificates or securities of like or equivalent kind and amount.

10. You may settle disputes and controversies with other parties relating to transactions had or intended to be had for the account of the undersigned, in accordance with the requirements or customs of the exchange, board of trade or other market on which the same were executed or were intended by you to be executed and settlements so made shall be binding on the undersigned.

11. Every statement of any account of the undersigned shall be deemed to have been assented to by the undersigned as authorized and correct, unless you shall receive written notice to the contrary within five days after the day on which such statement of account is forwarded by you, and every transaction indicated or referred to in any notice of sale or of purchase or other notice or com-

munication shall be deemed to have been assented to by the undersigned as authorized and correct, unless you shall receive written notice to the contrary at least fifteen minutes before the opening of the exchange, board of trade or other market on which the same was executed, on the second business day after the day on which such notice or other communication is forwarded by you.

12. Your failure to exercise any of your rights in any one or more instances shall not be deemed a waiver thereof for the future.

13. Any and all notices, demands and other communications sent by mail, telegraph or messenger to the undersigned at the place indicated on the reverse side hereof as the address to which all communications are to be sent, or so sent to the undersigned at any other place specified in a notice of change of address of the undersigned hereafter received by you, shall be deemed to have been delivered personally to the undersigned and shall have the same [fol. 47] effect as if such personal delivery had been made.

14. This is a continuing agreement and consent applying to any and all future as well as existing and past transactions of the undersigned through or with your firm or any successor firm which may continue the business, superseding all prior agreements with respect to any of the matters herein provided for, and the provisions hereof shall be binding upon the undersigned and the personal representatives, successors and assigns of the undersigned, and any and all action herein authorized may be taken during the lifetime of the undersigned, during any disability of the undersigned and after the death of the undersigned.

15. The undersigned, if an individual, represents that he or she is over the age of twenty-one years and is not an employee of any exchange, or of any corporation of which any exchange owns a majority of the capital stock, or of a member of any exchange, or of a firm registered thereon, or of a bank, trust company, insurance company, or of any corporation, firm or individual engaged in the business of dealing either as broker or as principal in stocks, bonds or other securities, bills of exchange, acceptances or other forms of commercial paper.

16. None of the provisions hereof shall under any circumstances be deemed to have been waived, modified or otherwise affected except by agreement in writing signed on your behalf by a partner of your firm.

Very truly yours, (Signature of Customer): ——

——.

Witness (Signature of Witness): —— ——.

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[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Dec. 21, 1933

Comes now J. M. Lee, as Comptroller of the State of Florida, defendant in the above cause, and respectfully moves the above entitled Court to dismiss the bill of complaint herein, and as grounds for said motion assigns the following:

1. That said bill of complaint shows upon its face that it is without equity.

2. That said bill of complaint shows upon its face that plaintiffs, and each of them, have a complete and adequate remedy at law.

[fol. 49] 3. That said bill of complaint shows upon its face that plaintiffs and each of them have a complete and adequate remedy at law for the recovery of any taxes which might be enforced by this defendant against them.

4. That said bill of complaint shows upon its face that this Court is without jurisdiction in that plaintiffs, and each of them, have a complete and adequate remedy at law as aforesaid.

5. That said bill of complaint shows upon its face that this Court is without jurisdiction in that the allegation that "this is a suit wherein the amount in controversy exceeds exclusive of interest and costs, the sum and value of $3,000", is a mere conclusion of law and conclusion of the pleader, and is not supported by the facts alleged; the only facts so alleged being the loss of the Florida business, investments and property of the plaintiff brokerage firms,

which is of value to them far in excess of $3,000, when the rule is well settled that in suits of this kind the amount in controversy is the amount of the tax and nothing more.

6. That said bill of complaint shows upon its face that this Court is without jurisdiction in that it is not alleged the damage to each of the plaintiff brokerage firms, exceeds the jurisdiction amount necessary, and therefore, it is impossible to determine that this Court has jurisdiction of each of the separate causes of action vested in the respective plaintiffs; it not being permissible to join two separate causes of action in which the aggregate amount confers jurisdiction, when the amount involved in each of the causes so joined would not separately confer jurisdiction.

[fol. 50] 7. That said bill of complaint shows upon its face that there is a misjoinder of parties plaintiff, inasmuch as the cause of action in each of the plaintiff brokerage firms is separate and distinct.

8. That said bill of complaint shows upon its face that there is a misjoinder of parties plaintiff, inasmuch as this suit is not brought or prosecuted as a class suit, but attempts to join as parties plaintiff two plaintiffs, each of whom is alleged to have a separate and distinct cause of action.

9. That the bill of complaint is insufficient as a predicate for the prayer of the said bill.

Respectfully submitted this 21st day of December, A. D. 1933.

Cary D. Landis, Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, Solicitors for Defendant.

[fol. 51] In United States District Court

[Title omitted]

Answer—Filed Dec. 21, 1933

Comes now the defendant, J. M. Lee, as Comptroller of the State of Florida, and in no manner waiving his motion

to dismiss filed herein, files this his Answer to the bill of complaint heretofore filed herein, and says:

1. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 1 of said bill of complaint, and demands strict proof thereof; except that he admits that he is a citizen of the State of Florida, resides in the City of Tallahassee in said State, and is the duly elected, qualified and acting Comptroller of said State, and that his office is located in the Capitol Building in Tallahassee, Florida.

[fol. 52] 2. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 2 of said bill of complaint, and demands strict proof thereof.

3. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 3 of said bill of complaint, and demands strict proof thereof, except that he admits that the plaintiff firms maintain branch offices located in the cities alleged in said numbered paragraph 3; but as to the relationship or exact status of these branch offices and their relationship to the home offices in New York of the plaintiffs, this defendant is without knowledge; but this defendant admits that the offices of plaintiff firms engage in the business of and act as brokers in the sale and purchase of securities, and furnish stock market quotation information and reports for the benefit of their customers.

4. That this defendant neither admits nor denies but states that he is without knowledge concerning the matters and things alleged in sub-paragraph (a) of numbered paragraph 4 of said bill of complaint, and demands strict proof thereof; except that concerning the transaction of a purchase of stock for a Florida customer, he alleges:

(1) That there is made and executed in the State of Florida a request to buy certain stock or other securities by or on behalf of such customer and in writing.

(2) That following the purchase by the broker to whom the said request to buy was made, there is made, executed and delivered in the State of Florida and in writing, a

[fol. 53] statement showing that such request to buy has been complied with and the purchase has been made; such compliance statement being a memorandum of sale showing and confirming the fact that a sale has been made to the customer of the requested stock; and said compliance statement is a memorandum of sale of stock, which memorandum is made and executed in writing in the State of Florida and delivered to the Florida customer in the State of Florida, and is taxable pursuant to the provisions of paragraph 3 of Schedule A of Section 1 of Chapter 15787, Laws of Florida, Acts of 1931.

(3) That following the purchase by the broker to whom such request was made as aforesaid, and following the delivery of the compliance memorandum of sale as aforesaid, and generally in all nonmarginal transactions or otherwise, whenever requested by the purchaser so to do, there is made by the broker in Florida to the purchaser in Florida a delivery of the shares or certificates of other evidences of the securities so purchased, and at the time of such delivery there is made and executed in writing in Florida, in the form of a receipt or otherwise, and delivered by the Florida customer to the said broker in Florida, a memorandum of delivery evidencing the said delivery as aforesaid, which memorandum of delivery is taxable under the provisions of subparagraph 3 of Schedule A of Section 1 of Chapter 15787, Laws of Florida, Acts of 1931.

That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in sub-paragraph (b) of numbered paragraph 4 of said bill of complaint, except that as to a sale of stock for a Florida customer, this defendant alleges:

[fol. 54] (1) That there is made and executed in writing in Florida, and delivered in Florida by the Florida customer to the Florida broker, a request to sell certain stock or other securities, which request is accompanied by the stock or securities requested to be sold or the money in sufficient amount to obtain the same; that said request is and constitutes a unilateral agreement to sell such stock or other securities, and is taxable in accordance with the law hereinabove mentioned; or in the alternative, and in the event that such request to sell is given orally by the customer to the broker, then there is made and executed

in writing by the broker a written instrument constituting an agreement to sell the stock so requested to be sold, which said written instrument is a written agreement to sell, taxable under the provisions of the law hereinabove mentioned.

(2) That following the sale by the broker pursuant to the request to sell as aforesaid, there is made and executed in Florida in writing by the said broker, and delivered by the said broker to the customer in Florida, a written instrument showing that the said request to sell has been complied with by the said broker, such written instrument constituting a memorandum of sale taxable under the provisions of the law above mentioned.

And further answering the allegations in numbered paragraph 4 of the said bill of complaint contained, this defendant alleges that upon a sale or purchase being made by the broker at the request of the Florida customer, there is made and entered in Florida in the books, ledgers or other records of the broker in Florida, a memorandum [fol. 55] showing that a sale has been made by or to the Florida customer so requesting as aforesaid, which memorandum is made as a part of a complete set of records showing the account of the customer, and showing the date of each transaction, the number of shares bought or received, or sold or delivered, the name of the security, the price, the debits, credits, and balances as the result of such transactions, as well as the interest, credits or adjustments allowed, all of which constitute a part of the complete records kept by each of the offices located within the State of Florida, of the account of each of their Florida customers, that the said memorandum so made or entered in the records or accounts of the broker as aforesaid is a memorandum of sale or a memorandum of delivery, as the case may be, and as such is taxable under the provisions of the law hereinabove mentioned.

And further answering the allegations in numbered paragraph 4 of said bill of complaint contained, this defendant alleges that whenever, either on purchase or sale or pledge or otherwise, there is a physical delivery of the actual shares or certificates or other evidences of securities being dealt in, by the customer to the broker, or by the broker to the customer, within the State of Florida, there is made

and executed in writing and delivered by the broker to the customer, or by the customer to the broker, as the case may be, within the State of Florida, a written receipt for or evidence of such delivery, which constitutes and is a memorandum of delivery, and which is taxable under the provisions of the law hereinabove mentioned.

And further answering the allegations in numbered paragraph 4 of said bill of complaint contained, this defendant says that if the actual sale of the security takes place [fol. 56] outside of the State of Florida, and when there is an agreement to sell and a memorandum of sale and a memorandum of delivery, or one or more of such instruments, which constitute written evidence of various steps in one and the same transaction, under the statute hereinabove set forth only one of such instruments is liable to the tax, and then only in the event that the same is made in Florida.

And further answering the allegations in numbered paragraph 4 of said bill of complaint, this defendant says that he is without knowledge concerning the exact forms used in connection with the transactions, or details or records or writings hereinabove in this paragraph mentioned, but states that all such information is fully and completely within the knowledge of both of the plaintiff firms, and readily obtainable by this Court.

5. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 5 of said bill of complaint contained, and demands strict proof thereof.

6. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 6 of said bill of complaint contained, and demands strict proof thereof, except that this defendant specifically denies that the arrangement made between the brokers and their customers for the purchase and sale of stock or securities is a simple agency contract, but alleges on the contrary that plaintiffs act as stockbrokers in that the contract entered into is a brokerge contract with all the legal incidents, obligations, rights and duties arising therefrom.

[fol. 57] 7. That this defendant neither admits nor denies, but states that he is without knowledge concerning

the matters and things in numbered paragraph 7 in said bill of complaint contained, and demands strict proof thereof.

8. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in said numbered paragraph 8 of said bill of complaint contained, and demands strict proof thereof.

9. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 9 of said bill of complaint contained, and demands strict proof thereof, except as to the records of the Florida customers contained in the Florida branch offices, and as to these this defendant alleges the same to be as hereinabove in numbered paragraph 4 hereof detailed and set forth.

10. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 10 of said bill of complaint contained, and demands strict proof thereof.

11. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 11 in said bill of complaint contained, and demands strict proof thereof, except that he denies that in transmitting messages or information from Florida to New York, or from New York to Florida, or in shipping or transferring stocks or securities for plaintiff's customers between such States, or between Florida and other States in which exchanges dealt on are [fol. 58] located, that the said plaintiffs, or either or any of them, are in any manner whatsoever engaged in commerce between the States or in commerce between the State of Florida and certain foreign countries.

12. That this defendant admits the allegations in numbered paragraph 12 of said bill of complaint contained, except that he denies that the tax imposed is limited to and applies only to actual sales and transfers of stock or to contracts entered into between sellers and purchasers thereof, or to memoranda of sales which are delivered by the seller to the purchaser, and alleges that the said Act speaks for itself.

13. That this defendant admits the allegations in numbered paragraph 13 of said bill of complaint contained, but alleges that the said Section 2 of the said Act speaks for itself.

14. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 14 of said bill of complaint contained, and demands strict proof thereof, except that he admits that he succeeded the prior Comptroller of the State of Florida in January, 1933.

14 (a) That this defendant denies that the meaning or intent of the said Florida Documentary Stamp Tax Act, or the proper construction thereof in respect to the matters referred to in the bill of complaint herein, was or is, that the taxes thereby levied shall apply only to a sale of stock, which sale actually takes place in the State of Florida, or to any contract for the sale of stock, which contract is made and delivered in the State of Florida by the seller to the purchaser of the stock, or to any memorandum of sale of a contractual nature, which is actually delivered within the [fol. 59] State of Florida by the seller of the stock to which it refers, to the purchaser thereof, and which memorandum passes between the said parties to the sale as an instrument obligating the seller on the one hand to make delivery, and which has the effect in the hands of the purchaser of a binding instrument by virtue of which he can enforce delivery to him of such stock; and this defendant further denies that the written notices or memoranda or other papers delivered by a purchaser or seller of stock to his agent, requesting such agent to make a purchase or sale on such principal's behalf, or which are delivered by the agent to his principal showing that the requested sale or purchase has been made outside the State of Florida, with a third party, by the agent for the principal as requested, or records which the agent may keep of such purchases or sales made by him outside the State of Florida, are not taxable under the Florida Documentary Stamp Tax Act, for any reason whatsoever; and this defendant further denies that the class of documents taxable under said statute is limited to instruments which pass from the seller to the purchaser in connection with a sale of stock, and denies that the language of the statute or its

proper construction excludes such papers or memoranda of sales from taxation thereunder; and alleges that the said statute, together with its meaning, intent and legal effect, speaks for itself, and is a matter of law for this Court to determine, rather than the construction placed thereon by the plaintiffs herein.

15. That this defendant admits that on or about the 23rd day of November, 1933, he appeared at the branch offices of each of the plaintiff brokerage firms located in Jacksonville, Florida, but denies that he demanded that documentary stamps in any amount be placed upon any [fol. 60] written request which any customer as principal should make of the said firms and brokers, or either of them, as their agents or otherwise, to either buy or sell stock for such customers on exchanges outside the State of Florida, or on any of the telegraphic messages which the employees of the Florida branch offices of the said brokerage firms should receive from the New York offices of the firms, and deliver to Florida customers, by which the said firms, as agents or otherwise, informed the said customers, as principals or otherwise, that the requested purchase or sale had been made as the customer had directed; and this defendant denies that he then took, or since that time has taken, the position that the said communications between the said brokers and their principals are taxable under said Act, or that the records which said principal offices keep of the sales and purchases their firms make in States other than the State of Florida, for or at the request of their Florida customers, are taxable under said Act, or that he is threatening to enforce the payment of such taxes in any manner by virtue of the enforcement or penalty provisions of said Act or otherwise, except that this defendant admits that at such time he stated and demanded that documentary stamps in the amount provided for by the said Act should be placed upon and paid for in respect of the several documents, writings, instruments, memoranda, and/or records as hereinabove in numbered paragraph 4 hereof detailed and set forth as taxable under the *the* said Act; and this defendant alleges that since such time he has maintained the same position, and further alleges that he is threatening to enforce the Act, in [fol. 61] compliance with the terms thereof, against the plaintiffs and each of them, and against every other person,

firm or corporation subject to the terms of the Act, who is violating the same or failing to comply therewith; but alleges that such enforcement will not be carried out in any unreasonable, arbitrary or oppressive manner.

16. That this defendant denies that if the said Florida Documentary Stamp Tax Act be construed according to his contentions as hereinabove made, that the levy and collection of the tax as demanded and threatened by this defendant as hereinabove set forth, or the requirement that the same be paid by the plaintiffs under said Act under any circumstances whatsoever, would render said Act unconstitutional as a violation of Article I of Section 8, Clause 3, of the Constitution of the United States, by constituting any burden on any interstate commerce in which plaintiffs may be engaged; and denies that the same would be a violation of the first Section of Article XIV of the amendments to the Constitution of the United States, as depriving the plaintiffs of their property without due process of law, or by denying to them within the jurisdiction of the State of Florida, the usual protection of the laws; and denies that plaintiffs are engaged in interstate commerce, and denies that the said Documentary Stamp Tax Act of Florida, or the enforcement of the taxes therein levied and required to be collected and paid in any manner whatsoever, violates any provision of the Constitution of the United States or any amendments thereto.

17. That this defendant denies that if the said Florida Documentary Stamp Tax Act be construed or enforced according to his contentions as hereinabove set forth, it would [fol. 62] violate either the 12th Section of the Declaration of Rights, or the first Section of Article IX, or the 16th Section of Article III of the Constitution of the State of Florida in any manner whatsoever.

And further answering the last paragraph in numbered paragraph 17 of said bill of complaint contained, this defendant denies that he has threatened to proceed to enforce said Act, except as hereinabove set forth and alleged, but admits that he will enforce the same in compliance with the terms thereof, retro-actively as of November 23, 1933, and that he so advised these plaintiffs.

18. This defendant neither admits nor denies but states that he is without knowledge concerning the matters and

things in numbered paragraph 18 of said bill of complaint contained, and demands strict proof thereof.

19. This defendant neither admits nor denies but states that he is without knowledge concerning the matters and things in numbered paragraph 19 of said bill of complaint contained, and demands strict proof thereof, except that he denies that the plaintiffs have no plain, adequate or complete remedy at law, and denies that to enforce the right which the plaintiffs have to recover back amounts paid through such stamp taxes in the event the same should be found to have been illegally levied or collected, would require a multiplicity of suits; and this defendant alleges that one suit at law for the recovery back of such taxes would determine the constitutionality or unconstitutionality, and the validity or invalidity, and the legality or illegality of the said Act, and the taxes levied or collected [fol. 63] pursuant thereto, and would enforce a return of the full amount in the event such were adjudged to be due plaintiffs; and this defendant alleges that plaintiffs, and each of them, have a full, complete, plain and adequate remedy at law.

20. That this defendant denies that there is no plain, adequate or complete remedy at law available to the plaintiffs, but on the contrary alleges that there is, in answer to the allegations in numbered paragraph 20 of the bill of complaint contained, a plain, complete and adequate remedy at law.

21. That this defendant denies that it would be necessary for the plaintiffs to resort to a multiplicity of suits, either civil or criminal, to protect themselves or their servants in the conduct of their said business, in order to test the validity of the Act, or that the enforcement of the same in the manner hereinabove set forth will render it unprofitable for plaintiffs to continue in the conduct of their said business, or make it impossible for their employees to continue to perform their duties through being constantly harassed by multiple arrests, or otherwise. And denies that such enforcement would deprive the Florida customers of the plaintiffs of the representation which they are being afforded by the plaintiffs, or would cause undue expense or hardship upon the plaintiffs.

22. That this defendant denies that the enforcement of said Act in the manner hereinabove set forth against the plaintiffs as the same is hereinabove construed by him, would result in irreparable injury, or any injury, to the [fol. 64] plaintiffs, or destroy the Florida business of the plaintiff brokerage firms, or cause them the loss of their good will in any manner whatsoever, or render them unable to serve their customers who are residents of the State of Florida, or cause loss to plaintiffs in the value of the properties in which they have invested, and which are being used by them in the conduct of their business in Florida, whether the same could be transported profitably for use elsewhere, or put to any other use or not. And this defendant further alleges that the value of such business, good will, property or investments is immaterial to the issues in this cause.

23. That this defendant admits that he will enforce in the manner hereinabove set forth the collection of taxes pursuant to the provisions of the said Florida Documentary Stamp Tax Act, and avail himself of the penalties provided for therein, to the extent as set out in numbered paragraph 4 hereof, unless enjoined by this Honorable Court.

24. That this defendant denies that irreparable loss or damage would result to plaintiffs unless a temporary restraining order should be granted by reason of the construction of the said Act placed thereon by this defendant as hereinabove in paragraph 4 hereof contained, or by reason of the daily payment of taxes during the time between the filing of the bill of complaint herein and the hearing and determination after due notice of an application for the interlocutory injunction, or by reason of leaving the plaintiffs' employees in their said Florida branch offices subject to multiple arrests or criminal prosecutions pending said hearing for an injunction.

25. And further answering the bill of complaint, this defendant now offers to receive tax payments from the [fol. 65] plaintiffs on account of the taxes required by the terms of the said Documentary Stamp Tax Act as hereinabove in numbered paragraph 4 hereof set forth, and to impound the same and securely keep and preserve the same pending the ultimate and final decision on the law side of

a court of last resort, either State or Federal, provided that such suit be filed immediately and prosecuted with all reasonable diligence, and provided that such taxes be paid from day to day as the same become due; and upon the ultimate decision, should it be adjudged that said taxes, or any of them, were illegally exacted or collected, to repay the same in accordance with such final judgment.

26. And further answering this bill of complaint, this defendant alleges that wherever in this Answer the word "security", (or the plural thereof) is used, it is intended to mean shares or certificates of stock or profits or interest in property or accumulations in any corporation, or rights to subscribe for or to receive such shares or certificates.

And now having fully answered the said bill of complaint, this defendant respectfully moves to be hence discharged with his costs in this cause most wrongfully sustained.

J. M. Lee, as Comptroller of the State of Florida.
Cary D. Landis, Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, Solicitors for Defendant.

[fol. 66] *Duly sworn to by J. M. Lee. Jurat omitted in printing.*

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Dec. 21, 1933

It appearing that on December 11, 1933, this Court made and issued a temporary restraining order enjoining the defendant in certain respects as therein specified, and that said order provided that the same should remain in effect until the hearing and determination of the application for an interlocutory injunction in this case, but not to exceed ten (10) days from that date unless the same should be extended for a like period within said time, and the Court having therein set December 21, 1933, as the time for the

hearing of such application, and the application having been presented but remaining undetermined on that date.

It is, therefore, ordered that said temporary restaining order be, and the same is hereby extended until the deter-
[fol. 68] mination of said application for interlocutory injunction herein.

Done and ordered at Pensacola, Florida, this 21st day of December, A. D. 1933.

Wm. B. Sheppard, United States District Judge.
N. P. Bryan, Circuit Judge. Alexander Akerman, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT—Filed Jan. 1, 1934

Come now the plaintiffs in the above entitled cause, and pursuant to leave granted by order of Court, file this [fol. 69] amendment to their bill of complaint herein, and hereby amend said bill by adding thereto the following allegations to be designated as paragraphs 22-a, 22-b and 22-c, to-wit:

"22-a. Plaintiffs further allege that the amount of the stamp taxes, to enjoin the imposition and collection of which this suit is brought, is far in excess of the sum of $3,000.00; that the amount of stamp taxes which, under the defendant Comptroller's construction of the Act, would be payable and collectible by virtue of the business transacted by the plaintiffs making up the firm of Thomson & McKinnon through that firm's Florida offices, amounts to more than $3,000.00 for the period from November 23, 1933, to December 11, 1933, the date of the filing of this suit, and will amount to more than $3,000.00 by virtue of such business for the period from the commencement of this suit to the time of its final determination; and that the amount of stamp taxes which, under the defendant Comptroller's construction of the Act, would be payable and collectible by virtue of the business transacted by the plaintiffs making up the firm of Fenner, Beane & Ungerleider, through that firm's Florida offices, amounts to more

than $3,000.00 for the period from November 23, 1933, to December 11, 1933, the date of the filing of this suit, and will amount to more than $3,000.00 by virtue of such business for the period from the commencement of this suit to the time of its final determination.

"22-b. The plaintiffs named and described in the original bill of complaint as Co-partners trading and doing business under the firm name and style of Thomson & McKinnon, further allege that the Florida business of that firm, which in the original bill it is alleged will be lost and destroyed by the enforcement of Chapter 15,787, Laws of [fol. 70] Florida, 1931, as threatened, is of a value far in excess of $3,000.00, and that the loss, damage and injury, which by paragraphs 19, 20, 21 and 22 of the original bill it is shown and alleged will occur to and be suffered by the plaintiffs through the threatened enforcement of the Act, will amount to more than $3,000.00 as to each of the plaintiffs described, as aforesaid, as the Co-partners constituting the said firm of Thomson & McKinnon.

"22-c. The plaintiffs named and described in the original bill of complaint as Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, further allege that the Florida business of that firm, which in the original bill it is alleged will be lost and destroyed by the enforcement of Chapter 15,787, Laws of Florida, 1931, as threatened, is of a value far in excess of $3,000.00, and that the loss, damage and injury, which by paragraphs 19, 20, 21 and 22 of the original bill it is shown and alleged will occur to and be suffered by the plaintiffs through the threatened enforcement of the Act, will amount to more than $3,000.00 as to each of the plaintiffs described, as aforesaid, as the Co-partners constituting the said firm of Fenner, Beane & Ungerleider."

Shutts & Bowen, Attorney for Plaintiffs, by Charles A. Carroll.

[fols. 71 & 72] *Duly sworn to by E. W. Griffin and Kingman Moore. Jurats omitted in printing.*

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—Jan. 18, 1934

This cause coming on to be heard upon the motion of the plaintiffs for an interlocutory injunction, the verified bill of complaint, the amendment thereto, the affidavits in support thereof, and the motion of the defendant to dismiss the bill of complaint, and counsel for the respective parties having appeared before the court in accordance with due notice of hearing on said motion for injunction, and the court having duly considered the same upon the [fol. 74] briefs submitted after argument of counsel, and being of the opinion that the plaintiffs are entitled to the interlocutory injunction as prayed, it is:

Ordered, adjudged and decreed that, until further order of this court, the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, be and they are hereby restrained from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for by reason of any written communication, document or memorandum (with the exception of marginal agreements whereby money or credit is loaned by the plaintiff brokers to their Florida customers) which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or

[fol. 75] memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees. This injunction shall become effective upon the filing in this cause of a bond of the plaintiffs with good and sufficient sureties to be approved by the Clerk of this Court, in the penal sum of $10,000.00 payable to the defendant, conditioned for the payment of such costs and damages as may be suffered by the defendant if it should be hereafter determined that this injunction was illegally or improvidently issued.

Done and ordered in Chambers this 18th day of January, A. D. 1934.

N. P. Bryan, U. S. Circuit Judge. Alexander Akerman, U. S. District Judge. Wm. B. Sheppard, U. S. District Judge.

[fol. 76] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes, and Benjamin E. Billings, Co-partners, Trading and Doing Business under the Firm Name and Style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, Earl H. Hulsey, John McCorkle, Rob't A. McCord, John L. Julian, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B.

Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick, and Hoyle Jones, Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

vs.

J. M. Lee, as Comptroller of the State of Florida, Defendant

In Equity. Suit by John P. Bickell and others against J. M. Lee, as Comptroller of the State of Florida. On defendant's motion to dismiss the bill of complaint as amended and plaintiffs' motion for an interlocutory injunction.

Shutts & Bowen, of Miami, Florida, for plaintiffs.

Cary D. Landis, Atty. Gen., Robert J. Pleus and J. V. [fol. 77] Keen, Assts. Atty. Gen., of Tallahassee, Florida, for Defendant.

Before Bryan, Circuit Judge, and Sheppard and Akerman, District Judges

Opinion—Filed Jan. 24, 1934

Sheppard, District Judge:

The plaintiffs, who comprise two co-partnerships and who are engaged in the business of stock brokers, seek injunctive relief against the Comptroller of the State of Florida by a bill to restrain the enforcement of the Stamp Tax Act (Chapter 15,787, Laws of Florida, 1931), on the ground that the same violates the Constitution of The United States (Article 1, Section 8, Clause 3) by laying an undue burden on interstate commerce, and that such enforcement of the Act deprives plaintiffs of their property without due process of law (Article 14, Section 1).

The Act assailed levies a tax of 10¢ per $100.00, inter alia, upon

"all sales, agreements to sell, or memoranda of sales or deliveries of, transfers or legal title to shares, or certificates of stock * * * whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement of memorandum or other evidence of transfer or sale * * *".

Also, "promissory notes, non-negotiable notes, written obligations to pay money, * * * made, executed, delivered, sold, transferred or assigned in the State of Florida * * *".

While the plaintiffs are not citizens of Florida, they maintain branch offices in the State through which they act as agents for their Florida customers in the capacity of commission brokers by making purchases and sales of stock on the New York Stock Exchange and on other [fol. 78] Exchanges outside of the State of Florida. The practice and procedure followed by the two firms in representing their customers on the Stock Exchanges is set out in extenso in the Bill of Complaint, and is that substantially followed by all stock brokers. It is sufficiently disclosed by the bill that all purchases and sales of stock and the actual delivery is made in the State of New York, or other state in which the Exchange is located, between the floor members or brokerage firms who take part in such transactions simultaneously with full payment for the stock. The brokerage firm, acting as agent for its Florida customers, completes the transaction outside of the State of Florida. Prior to the completion of the transaction the only written documents passing between the brokerage firm and the customer in Florida are the written requests of the customer that the firm purchase or sell for his account, and copies of telegraphic communications from the New York Office of the broker advising the customer that such requests have been complied with.

Defendant's motion to dismiss is upon general grounds, that the bill is without equity, plaintiffs having their remedy at law, that it is not alleged that each of the plaintiff brokerage firms will be damaged in an amount in excess of $3,000.00; that there is a misjoinder of causes of action and of parties plaintiff. After argument counsel for plaintiffs were allowed to amend so as to sufficiently allege damages to each party in the jurisdictional amount.

The jurisdictional amount for each party plaintiff, and diversity of citizenship being properly averred, all questions of jurisdiction may be disposed of by our holding that plaintiffs' remedy at law is not plain, adequate and complete. It is alleged in the bill that the payment of [fol. 79] each tax under the Act is a separate transaction and consequently the recovery of such payments at law would require a multiplicity of suits and this alone, we

conclude, is sufficient to give a court of equity jurisdiction.

There is no merit in defendant's contention that there is a misjoinder of parties plaintiff or of causes of action. The joinder is clearly within the scope of Federal Equity Rule 26 which allows a joinder where sufficient grounds appear for uniting the causes of action in order to promote the convenient administration of justice. That this ground for joinder applies to parties plaintiff as well as defendants is, it appears, well settled; see, International Organization, etc., vs. Red Jacket C. C., etc., 18 F. (2d) 839; and Shamrock Mfg. Co. vs. Radio Corp., 37 F. (2d) 675.

It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely completed outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel. Hatch vs. Reardon, 97 N. Y. S. 535. For a state to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312.

However, where a sale is made of stock of a Florida corporation and a transfer made upon the books of the corpo- [fol. 80] ration in Florida, the State may properly tax the transfer as one made within the State. See People ex rel. Hatch vs. Reardon, supra.

Although the point was not argued by counsel nor directly presented in the bill, the allegations of the bill disclose a transaction with reference to the marginal accounts of Florida customers with the brokers' agents in Florida. In view of this showing by the bill, even though not put in issue, we deem it advisable, as a cautionary suggestion, to decide once for all that such transactions are subject to the tax. The agreement which the customer is required to sign upon opening a marginal account is attached to the bill as an exhibit. It provides that any and all securities, commodities and other property held by the broker for the account of the customer shall constitute collateral security for any and all of the obligations of the customer to the broker. Upon the execution of such an agreement and the

deposit of security the broker advances a portion of the purchase price of the stocks which the customer wishes to buy on margin. This is clearly a loan of money or credit by the broker to the customer and is a transaction collateral to the purchase or sale of stock. The transaction takes place entirely in Florida and is similar to the execution of a collateral note to secure a loan from a bank. This collateral agreement may be subject to the tax in accordance with the amount of money loaned thereunder as it is a written obligation to pay money which is made, executed and delivered in the State of Florida.

Interlocutory injunction will issue in conformity with the views here expressed.

[fol. 81] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AMENDING TO CHANGE NAME OF PLAINTIFF FIRM—Filed March 10, 1934

It is hereby stipulated by and between the parties plaintiff and the party defendant in this cause, through their undersigned attorneys of record, that without the necessity for an order of Court, and without the filing of a formal amendment to the bill, or the filing of a supplemental bill, the original bill of complaint be, and the same is hereby [fol. 82] considered further amended to substitute the firm name "Fenner & Beane" in all places in the bill of complaint where the firm name "Fenner, Beane & Ungerleider" is used and stated, and that in all future proceedings in this cause the partnership firm which is composed of certain of the plaintiffs, and which was originally designated herein as the firm of Fenner, Beane & Ungerleider, shall be named and referred to as Fenner & Beane.

Dated this 9th day of March, A. D. 1934.

Charles A. Carroll, Shutts & Bowen, All of Miami, Florida, Attorneys for Plaintiffs. Cary D. Landis, Attorney General of Florida, by Robert J. Pleus, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General of Florida; H. E. Carter, J. V. Keen, Assistants Attorney General of Florida, All of Tallahassee, Florida, Attorneys for Defendant.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—Filed March 10, 1934

It is hereby stipulated in this above entitled cause, by and between the parties plaintiff and the party defendant, through their respective undersigned attorneys of record, that for convenience, and to expedite a trial of this cause, the facts which are hereinbelow set forth and the writings and instruments which are herein referred to and attached as exhibits, shall be evidence in this cause, upon the issues raised by the pleadings to which they relate, and as to which they may be material, and that said facts and instruments shall be admissible and received as competent evidence upon final hearing in this cause in lieu of the testimony of competent witnesses in open Court as to said facts and matters, and in lieu of formal introduction of the said instruments and writings into evidence; and

It is further stipulated that those facts and matters which are hereinbelow described as being the testimony or the evidence of the parties plaintiff or party defendant, likewise [fol. 84] shall be competent evidence upon final hearing in this cause, in the same manner and with the same effect and probative force as though the "testimony" referred to had been adduced at such hearing by interrogation of witnesses without objection; and

It is hereby further stipulated that in addition to the evidence supplied by this stipulation the parties hereto shall be at liberty to submit any other and additional evidence upon a final hearing in this cause, which may be competent and material and relevant upon any of the issues in this case.

The matters of fact and writings and instruments so stipulated herein are as follows:

1. The plaintiffs in this case, as partners respectively of the firms of Thomson & McKinnon and Fenner & Beane, which are hereinbelow referred to as the plaintiff firms, have their principal offices in the City, County and State of New York, and are engaged in the business of acting as stock brokers. Each of said plaintiff firms has numerous branch offices in places other than New York City, including a number of branch offices within the State of Florida,

which are located in the Florida cities mentioned in the bill of complaint in this case. Each of said firms has one or more members who are members of the New York Stock Exchange and of the leading Stock Exchanges located in the principal cities of the United States and in certain Stock Exchanges in foreign countries. No one of the plaintiffs is a member of any Stock Exchange located within the State of Florida, and the plaintiffs do not transact any business on any Stock Exchange located or situated in the State of Florida. In conducting such business the plaintiff firms act for their customers in their capacity as commission brokers and do not engage in the business of floating, issuing or underwriting stocks or securities. The business transacted by the said firms for customers through their Florida branch offices consists of acting as brokers for such cus- [fol. 85] tomers in making for them purchases and sales of stocks and securities, principally on the New York Stock Exchange, and to a considerably lesser extent on other Stock Exchanges. In connection with acting as brokers for their Florida customers in such manner, plaintiff firms in their branch offices in the State of Florida furnish for the convenience and benefit of their customers, stock market telegraphic information reflecting the market price of stocks, sometimes referred to as market quotations, and such information is provided by the plaintiff firms by leased direct wire telegraph facilities from various Stock Exchanges outside the State of Florida. In addition to the leased telegraphic facilities by which market quotations are received in the Florida branch offices, each of the plaintiff firms leases, maintains and operates direct, private telegraphic facilities between its Florida branch offices and its New York office, which service is devoted exclusively to use by the firm for its firm business.

2. Each and all of the plaintiffs are non-residents of the State of Florida, and the States of their citizenship and places of their residence respectively, are as stated and alleged in the bill of complaint as amended in this cause.

3. The stamp taxes which are claimed by the Comptroller to be payable by virtue of the transactions with which the case is concerned, would amount to more than $3,000.00 exclusive of any interest or costs, for each of the two plaintiff partnership firms for the period from November 23,

1933 (the date on which the defendant Comptroller demanded that payment of such tax should be made), to December 14, 1933 (the date on which this suit was instituted), and likewise would amount to more than $3,000.00 exclusive of interest or costs, for each of the two plaintiff partnership firms for the time subsequent to the commencement of this suit.

[fol. 86] 4. That value of the Florida business of each of said partnership firms, which it is alleged in the original bill of complaint would be lost and destroyed by the enforcement as threatened of Chapter 15787, Laws of Florida 1931, is in excess of the sum of $3,000.00, and the loss, damage and injury which by paragraphs 19, 20, 21 and 22 of the original bill of complaint it is alleged would occur to and be suffered by plaintiffs through the threatened enforcement of said Act, would exceed the sum of $3,000.00, exclusive of any interest or costs, as to each of the plaintiff partnership firms, and would amount to more than $3,000.00 as to each of the plaintiffs.

5. It is the testimony of the plaintiffs that the enforcement of the Act, as threatened, will result in injury amounting to more than $3,000.00, exclusive of interest and costs, to each of the plaintiff firms, through reduction in their Florida business, including injury to their good will and injury to their property. It is denied by the answer of the defendant that such loss, damage or injury would occur from such enforcement of said Act, and it is not now admitted or conceded by the defendant that such loss, damage or injury would so result from such enforcement of the Act.

6. The manner in which the plaintiff brokers make purchases and sales of stock on the New York Stock Exchange for their Florida customers, is similar in all material respects to that employed in making purchases and sales on the other Stock Exchanges all of which are outside the State of Florida on which such transactions are made by the plaintiff firms for their Florida customers. These transactions in all material respects are handled in the same manner by the two plaintiff firms, and the course and practice followed by the plaintiff brokers in making purchases and sales of [fol. 87] stock on the New York Stock Exchange for Florida customers is as follows:

7. As to a purchase of Stock for a Florida customer:

(a) An "order" for the purchase of stock is made by a Florida customer by communicating to the employees of a Florida branch office of the firm that he desires them to purchase for him a quantity of a certain stock at a certain price, or at the market price then prevailing. The "order" may be an "open order", that is, one to remain in effect until executed or until cancelled by the customer, or it may be a "day order", which is to remain in effect only for the day on which it is given. Many such orders necessarily are never executed. The orders are not required to be in any particular form. They may be and often are transmitted orally, or by telephone, telegraph or letter. If the customer is in the branch office at the time his instructions are given, in such instance a written order is usually filled out by the customer, to which the customer affixes his signature, or the serial number which the firm has assigned to his account, or it is filled out by an employee of the brokers who, in that case, at the customer's direction and consent, either signs the customer's name thereto, or affixes the serial number of his account. The plaintiff firms assign a number to each customer which applies only to the account of the particular customer to whom the same is assigned, and which is used in identifying the account and transactions of the customer. It is not essential to such a transaction that the order should be in writing. A form of such a written "order" is attached hereto, marked Exhibit 1 and made a part hereof.

(b) The defendant Comptroller does not contend that a written order for purchase (Exhibit 1) is an instrument taxable under the Act.

[fol. 88] (c) The employees of the firm of the Florida branch office, upon receiving an order for the purchase of stock, communicate the same to the New York office of the firm, by telegraph, over the firm's leased private telegraph wire.

(d) Thereupon the plaintiff firm proceeds to execute the order of the Florida customer (if such order is possible of execution at the price specified), on the floor of the New York Stock Exchange, through its representatives, on the floor of the Exchange. The order is executed on the Ex-

change by the representative of the plaintiff firm by entering into a contract there with another floor member of the Exchange representing the owner of the stock which is for sale. The contract for the purchase of stock which is thus made by the plaintiff firm on the New York Stock Exchange, is one, the terms of which are specified and controlled by the rules of the New York Stock Exchange, which are the Constitution of the Exchange, and such rules as are provided thereunder. One such rule of the Exchange, and therefore one term of such contract, requires that the contract shall be reduced to writing and shall be exchanged by delivery in New York City between the parties thereto on the day of the transaction. Accordingly, on the day of such transaction a written contract known as an "exchange contract" is passed between the parties in the City and State of New York. A form of such "exchange contract" is attached hereto, made a part hereof and marked Exhibit 2.

(e) This "exchange contract", Exhibit 2, is not claimed by the defendant Comptroller to be taxable under the Act.

(f) Immediately following the making of such purchase of stock on the floor of the Stock Exchange in the manner above described, the New York City office of the firm com- [fol. 89] municates the fact by telegraph over its private wire facilities to the Florida branch office in which the order for the purchase originated. An employee in the Florida branch office receives or takes off the telegram by typewriter in original and copy form. Such telegraphic notice of the purchase which has been made in New York sets forth the date and time of the purchase, the number of shares and name of the stock, the price at which bought, and the serial number of the account of the customer who was represented in that transaction. A form of such telegraphic notice is attached hereto and made a part hereof, marked Exhibit 3.

(g) It is then the practice of the Florida branch office to notify the customer that the purchase has been made. This notice is sometimes given orally or by telephone. Where the customer is in the branch office, or requests it, the branch office customarily gives him such notice by delivering to him the original or a carbon copy of such telegram (Exhibit 3). The customer has no contractual or other right to demand the delivery to him of the original or of a copy of

such telegram, and the rules and practice of the plaintiff firms do not require the delivery thereof.

(h) This telegram containing information that the customer's requested purchase has been made in New York City (Exhibit 3) is claimed by the defendant Comptroller to be taxable under the Act involved.

(i) As a settled practice of the plaintiff firms, they dispatch to the customer from New York by mail a form statement showing that the purchase has been made. This notice is mailed from New York City on the day of the transaction. It contains the name of the seller, number of shares and name of the stock, price per share, amount of the commis- [fol. 90] sion, total consideration and the name of the customer. An example of such a notice or "confirmation" is attached hereto, made a part hereof and marked Exhibit 4.

(j) This communication which is mailed to the customer (Exhibit 4) is not claimed by the defendant Comptroller to be taxable under the Act.

(k) All purchases which are made on the New York Stock Exchange must be completed by actual delivery of the stock in New York City. This is accomplished either by actual transfer and delivery of the shares of stock, or by due corporate transfer thereof; the delivery must be made on the second day (barring Saturday) on which the Exchange is open for business after the day of the floor transaction. Full payment for the stock is required to be, and is made simultaneously with delivery, the payment therefor and the delivery thereof, both being made in New York City.

(l) The rules of the Exchange require that delivery must be accompanied by a "sales ticket", which is a paper containing the date, the name of the seller (that is, the name of the floor member or member firm who acted as the seller on the Exchange), the name of the purchaser to whom the delivery is to be made (that is, the name of the plaintiff firm who acted as purchaser on the New York Stock Exchange), the number of shares and name of the stock to be transferred, the price per share, and the total consideration thereof. It is required that this "sales ticket" shall bear all stamps which are required in connection with the sale in question by the laws of the United States and by

the laws of the State of New York. The Federal Stamp Tax Act (26 U. S. C. A. Sec. 901) and Section 270 of the Tax Law of the State of New York, each impose an excise tax on the transaction, and pursuant to the provisions of such Federal and State Statutes, the requisite stamps are [fol. 91] affixed to such "sales ticket" and cancelled, before the delivery of the same. An example of such "sales ticket", which is one that was actually received by one of the plaintiff firms in connection with a purchase of stock, and to which the Federal and New York State Excise Tax Stamps were affixed, is attached hereto, made a part hereof and marked Exhibit 5.

(m) This "sales ticket" (Exhibit 5) is not claimed by the defendant Comptroller to be taxed under the Florida Act.

(n) On such a purchase, after the plaintiff firm has completed the transaction through the acceptance of delivery of the stock in New York City for the Florida customer, the plaintiff firm either holds the stock in New York for the account of the customer, or forwards it to him. That is accomplished, not by sending the stock to the Florida branch office and having that office delivery it to him in Florida, but by sending the stock registered mail direct from the New York office of the plaintiff firm to the customer in Florida. When the stock is so mailed to the customer, there is enclosed with it a form of receipt which is to be signed by the customer and returned to the New York office of the plaintiff firm by mail. This is termed "customer's receipt" and bears the name of the plaintiff firm, recites the enclosure of certain stocks which are briefly therein described, gives the name of the customer and serial number of his account, and contains a place for the signature of the customer and bears a direction that the same should be signed and returned to the firm. An example of such a customer's receipt is attached hereto, made a part hereof and marked Exhibit 6.

(o) The defendant Comptroller contends that a receipt given by a Florida customer for stock which has been thus [fol. 92] purchased for him is taxable under the Act, and the defendant Comptroller contends that a receipt given

by a Florida customer for stock which may be delivered to him through a Florida branch office of the plaintiff firms following its purchase for him, is taxable under the Act involved.

8. As to a sale of stock for a Florida customer:

(a) The steps taken by the plaintiff firms in making a sale of stock on the New York Stock Exchange for a Florida customer are substantially the same as those above recited with respect to the making of a purchase of stock.

(b) An order for the sale of stock is placed in the same manner. The form which such order takes, when it is made in writing, in a Florida branch office, is shown by the Exhibit attached hereto and made a part hereof, marked Exhibit 7.

(c) It is contended by the defendant Comptroller that such a written order by a Florida customer to his brokers to sell stock for him on the New York Stock Exchange (Exhibit 7) is taxable under the Florida Act.

(d) Following the receipt of the "order" to sell, the Florida branch office communicates the order over its private wire to its New York office, and thereupon the order is executed on the floor of the New York Stock Exchange, where a representative of the plaintiff firm enters into a contract for the sale of such stock with another floor member of the Exchange representing a person desiring to buy the same. On the day that such transaction takes place on the New York Stock Exchange an "exchange contract", such as was described above in the case of a purchase of stock, is filled out, delivered and exchanged between the parties to the transaction in New York. An example of [fol. 93] such exchange contract used by one of the plaintiff firms in such a transaction is attached hereto, made a part hereof and marked Exhibit 8.

(e) The defendant Comptroller does not contend that the exchange contract (Exhibit 8) is taxable under the Florida Act.

(f) Immediately following the making of the sale on the floor of the Stock Exchange, the New York City office of the firm so notifies the Florida branch office in which the order for the sale originated. This notice is made by tele-

graph over the firm's private wire, and is received and taken off by an employee of the broker on a typewriter in the Florida branch office in original and carbon copy form, and sets forth the time and date of the sale, the number of shares and name of the stock, the price at which sold and the serial number of the customer represented in the transaction. An example of such a telegraphic notice of the making of such sale is attached hereto, made a part hereof and marked Exhibit 9. Upon receiving such notice, the Florida branch office customarily in turn notifies the customer. This is done either orally, or by telephone, or by furnishing the customer with the original or a carbon copy of the telegraphic communication which has been received from the New York office of the firm. There is no contractual or other obligation on the Florida branch office to deliver to the customer either the original or a copy of the communication in question. In most instances such a written notice that the order has been executed is delivered to the Florida customer by the branch office, but in many instances it is not done.

(g) The defendant Comptroller contends that all such telegrams or copies thereof (Exhibit 9) which are delivered [fol. 94] by a Florida branch office to a Florida customer, are taxable under the Florida Act.

(h) The settled practice of the plaintiff firms, as a means of notifying the customer that his order has been executed on the New York Stock Exchange, is to mail to the customer from New York City, on the day of the transaction, a written form reporting the transaction, and which notice contains the name of the person to whom the stock has been sold, the number of shares and name of the stock, the price per share, the total price, the amount of the commission, the amount of Federal and New York State Stamp taxes to be paid thereon, the net proceeds of the sale and the name of the Florida customer. This notice of transactions is given to the customers, in addition to such other notices as they may be given or which may be received by them through a Florida branch office or otherwise. An example of such notice or report which is mailed from New York City by the plaintiff firms to a Florida customer, is attached hereto, made a part hereof, and marked Exhibit 10.

(i) It is not contended by the defendant Comptroller that such mailed notice or report of sale (Exhibit 10) is taxable under the Florida Act.

(j) The delivery of the stock is made for and on behalf of the Florida customer by the plaintiff firm, in New York City, to the purchasing broker or brokerage firm, on the "delivery day". Simultaneously with the delivery of the stock, the net proceeds of the sale are received in New York City by the plaintiff brokerage firm for and on behalf of the Florida customer.

(k) In connection with the delivery of stock which the plaintiff firm makes in New York City for the Florida cus-
[fol. 95] tomer, there is delivered a sales ticket to which there are first affixed and cancelled the requisite amount of Federal and New York State Excise Tax Stamps. The form of such "sales ticket" has been described above in setting forth the procedure relating to a purchase of stock, and a copy of such a sales ticket, the original of which was actually delivered in New York City by one of the plaintiff firms in such a transaction, is attached hereto, made a part hereof and marked Exhibit 11.

(l) It is not contended by the defendant Comptroller that such a sales ticket (Exhibit 11) is taxable under the Florida Act.

9. When a Florida customer of one of the plaintiff firms delivers to the Florida branch office a sum of money to be used to pay for stock which is to be purchased for him or to be used by the brokers in obtaining stock for delivery in connection with a sale of stock which is to be made for him, a simple form of receipt is given by the Florida branch office to the customer. The practice is to make the receipt in triplicate, deliver the original to the customer, retain one copy in the branch office, and forward the other copy to the New York office. The receipts so given by the branch office to the customer are merely temporary receipts, and formal acknowledgment of the delivery of such funds to the firm is made in due course by mail to the customer by and from the New York office of the firm. The receipt given by the Florida office merely shows the date, the amount received, a notation that it is held for the account of a particular customer, and an appropriate signature on behalf of the firm.

A form of such receipt is attached hereto, made a part hereof, and marked Exhibit 12.

[fol. 96] 10. When, in connection with such transactions made on the New York Stock Exchange by a plaintiff firm for a Florida customer, the customer furnishes the Florida branch office with certificates of stock, the same form of receipt is delivered to him by the Florida branch office (Exhibit 12). In that instance, the receipt bears the description of the stock so delivered to the Florida branch office, and specifies the account for whom the same is to be held by the firm.

11. It is contended by the defendant Comptroller that such a receipt (Exhibit 12) when given by a Florida branch office to a customer upon the delivery of stock by the customer to the firm's branch office as aforesaid, is taxable under the Florida Act.

12. Accurate and complete book records of the transactions on behalf of all Florida Customers and of the debits and credits of their accounts are kept in the New York City offices of the plaintiff firms. Records of such matters are likewise kept in the branch offices, but are recognized and considered by the plaintiff firms as being approximations only and as being incomplete, and such approximate records are kept in the Florida branch office as a convenience to the operatives of the branch office, and as a convenience in informing customers of the approximate status of their accounts, and are not relied on by the plaintiff firms in any particular respect without comparison and confirmation thereof from the records of the New York office. An example of an actual ledger sheet of a Florida customer, as kept in the New York office of the plaintiff firm of Thomson & McKinnon, of the account of an actual Florida customer of the Miami, Florida, branch office of the firm (the name of such customer being, however, purposely omitted therefrom), is attached hereto, made a part hereof, and marked Exhibit 13. This is in the same form as the rec-[fol. 97] ords of the accounts of its customers which are kept in the New York City office of the plaintiff firm of Fenner & Beane.

13. It is not contended by the defendant Comptroller that these records of the transactions for Florida custo-

mers which are kept in the New York offices of the firms, are taxable under the Florida Act.

14. The Miami, Florida, branch offices' corresponding record of the account of the same customer is also attached hereto, made a part hereof and marked Exhibit 14, and is the same in all material respects as those kept by the branch office of the other plaintiff firm.

15. It is contended by the defendant Comptroller that such records of trades for a Florida customer which are kept in Florida branch offices (an example of which is Exhibit 14) are taxable under the Florida Act as to each transaction recorded thereon.

16. No accounting "statement", or report, is furnished to the Florida customers from the records which are maintained in the Florida branch offices, but regular monthly statements of the accounts of the Florida customers are prepared from the office records of the same as kept in New York City, and mailed to all Florida customers from New York City.

17. While, as particularly stated above, the defendant Comptroller contends that a number of the above described papers and writings which are utilized in connection with the making of a purchase or sale of stock on the New York Stock Exchange for a Florida customer, are each taxable under the Florida Act, it is conceded by the defendant Comptroller that as to a particular purchase or sale of stock, not more than one of such papers, instruments or records relating thereto, which he contends are taxable, shall bear the tax.

[fol. 98] 18. The plaintiffs contend that such instruments, papers, writings or documents above described as being used in connection with the purchase or sale, in New York City on the New York Stock Exchange, of stocks for a Florida customer, are not taxable under the Florida Act, and the plaintiffs further contend that if the Florida Act be construed to apply to any of the same, the Act then is in violation of provisions of the Federal and Florida State Constitutions in the respects alleged in the bill of complaint in this case.

19. A Florida customer who is not trading on a marginal basis does not sign any contract preliminary to trad-

ing, for instance such as the "customer's agreement and consent" which is signed by marginal customers and herein below described, an example of which is attached as Exhibit 15, and there is no obligation on the part of the brokers except the obligation implied on the part of the brokers to exercise reasonable care in the discharge of their duties as brokers, and the implied understanding that the transaction will be subject to the rules of the New York Stock Exchange, which rules, among other things, are designed to protect the customer with respect to any monies or stocks which he may deposit with the brokers, or which brokers may receive for his account, and to assure him the safe return, in due course of the undertaking, of the monies or stocks to which he is entitled.

20. In cases where the Florida customer has a marginal account, exactly the same relationship of principal and broker exists between the customer and the brokers with respect to execution of the customer's orders for the purchase and sale of stock. Before opening a marginal account, the customer signs the regular form of customer's agreement, an example of which is the "Customer's Agreement and Consent" used by the plaintiff firm of Thomson & McKinnon in such connection, a copy of which is attached [fol. 99] hereto, made a part hereof and marked Exhibit 15. This instrument is in all material respects similar to that used in the same connection by the plaintiff firm of Fenner & Beane.

21. In this suit, the defendant Comptroller does not contend that such contract (Exhibit 15) is subject to any tax under the Florida Act.

22. This "Customer's Agreement and Consent" (Exhibit 15) is an agreement which sets forth certain terms and conditions under which marginal transactions for the account of the customer are to be handled. It does not provide for the purchase or sale of any particular stock. It is general in its terms and remains in effect so long as the customer carries an account with the brokers, applying not to any present transaction but to such future transactions for the purchase or sale of stocks as the customer may request the brokers to make upon his behalf.

23. Where a customer has signed such an agreement and desires to purchase certain stock on margin on the New

York Stock Exchange, his order will be executed by the brokers without requiring him, at the time of the giving of his order, to deposit the full consideration which is to be paid for the stock at the price specified. On this marginal basis, he is required to supply a substantial portion of such purchase price (the minimum fraction required to be deposited being fixed by the rules of the Stock Exchange). The balance of the purchase price of the stock which is in excess of the deposit mentioned is then, at the time the purchase is made on the New York Stock Exchange, advanced by the brokers for and on behalf of the customer. In making the purchase, the brokers are required to pay the full purchase price to the other brokerage firm from whom they buy the stock in New York City. Such payment in full for the stock purchased is made at the time delivery of the stock is made in New York City. [fol. 100] As collateral for the portion of the purchase price of the stock which has been advanced by the brokers, the brokers hold the stock which is delivered to them in the purchase transaction in New York City for the customer's account. The customer may thereafter obtain the stock by paying to his brokers the amount which has been so advanced by them, or he may instruct the brokers to sell the stock, in the event of which sale the proceeds will be applied first to repaying the brokers for the amount advanced as aforesaid.

24. Where a Florida customer dealing on a marginal basis places an order with his brokers for the sale of stock on the New York Stock Exchange, the procedure by which the sale is accomplished is exactly similar to the procedure in the case of sales by a customer not having a marginal account, except in the case of a marginal customer, the proceeds of the sale are ordinarily credited to him in his account with the brokers, instead of being remitted to him at once by the brokers.

25. It may be, and in some instances is days and months, after a customer signs and delivers such an agreement to the brokers, before any transaction is handled by the brokers for the customer in such account. It may be that no transaction will ever be handled for a customer signing a customer's agreement. Loans which are made by the brokers to customers trading on a marginal basis are not made at the time of the signing of such agreement, but are made

after the making and delivery of such agreement and as an incident to the consummation of a purchase of stock for the customer, at the respective times that the brokers are required to pay the purchase price of stocks purchased; that is, at the times when they receive delivery of stocks for the customer upon the making of purchases for [fol. 101] him. The customers who sign such an agreement are not indebted to the brokers at the time that such an agreement is signed and delivered, and no money is loaned to the customers by the brokers for or upon the delivery to them of such an agreement. Any money which is loaned to a marginal customer by the brokers is loaned not by virtue of said agreement, but is loaned, as aforesaid, as an incident to the purchase of stock for such customer, as thereafter ordered. However, it is essential to the plaintiff brokers and to all other brokers engaged in a similar business that loans should not be made by them to customers for the purchase of stocks on a marginal basis unless the customer shall have signed and delivered to them an agreement substantially the same as Exhibit 15, giving the brokers certain privileges as to the handling and pledging of the stocks of such a customer, the same being for the protection of the brokers and rendered necessary because of certain legal restrictions by which they would not be enabled to deal with the stock held for a marginal customer in the respects permitted by the customer's agreement without his consent as expressed therein.

26. The Honorable J. M. Lee has been Comptroller of the State of Florida since January 3, 1933. His predecessor in such office was the Honorable Ernest Amos, who held such office as Comptroller in the year 1931, when the Florida Act in question went into effect. While acting as Comptroller between the time of the enactment of the statute and the end of his term of office on January 3, 1933, the prior Comptroller, Ernest Amos, construed such Act as shown by exhibits 16 to 19, inclusive, attached hereto. The demand and effort of the present defendant Comptroller to collect such tax on the transactions, instruments and documents in question was not made or asserted until [fol. 102] approximately six months after he went into office. The construction placed on the Act by the prior Comptroller, Ernest Amos, is shown and reflected by cor-

respondence which passed between him and attorneys of record for the plaintiffs in this case, including letters exchanged between them on October 20 and 27, 1931, and telegrams exchanged between them dated January 5 and 6, 1932, true copies of which are attached hereto, made part hereof and marked Exhibits 16, 17, 18 and 19 respectively, and the prior Comptroller's construction thereof remained unchanged thereafter, until changed by the present Comptroller.

27. The duty of administering the Act in question (Chapter 15,787, Laws of Florida 1931) is placed on the Comptroller of the State of Florida. The penalty for making or accepting an instrument or document required by the Act to be stamped, without the stamp tax being paid is by the Act declared to be a misdemeanor. Such misdemeanor (by Section 7104, Comp. Gen. Laws of Florida, 1927) is punishable by a fine not to exceed $200.00, or imprisonment not to exceed ninety days, or both, in the discretion of the Court. The plaintiffs in due course of the business through their Florida branch offices, handle each day a great many of the documents hereinabove described, and which are contended by the defendant Comptroller to be subject to tax under said Act.

28. Paragraph 25 of the answer of the defendant Comptroller reads as follows:

"And further answering the bill of complaint, this defendant now offers to receive tax payments from the plaintiffs on account of the taxes required by the terms of the said Documentary Stamp Tax Act as hereinabove in numbered paragraph 4 hereof set forth, and to impound the same and securely keep and preserve the same *and securely* [fol. 103] *keep and preserve the same* pending the ultimate and final decision on the law side of a court of last resort, either State or Federal, provided that such suit be filed immediately and prosecuted with all reasonable diligence, and provided that such taxes be paid from day to day as the same become due; and upon the ultimate decision, should it be adjudged that said taxes, or any of them, were illegally exacted or collected, to repay the same in accordance with such final judgment."

The defendant testifies in this case to the same effect as the matters set forth in Paragraph 25 of his answer

above quoted. (Although such matters are not conceded by the plaintiffs to be the fact.)

29. The Comptroller has in his answer (paragraph 15) averred, and it is the defendant's testimony in this case (although not conceded by the plaintiffs to be the fact), that his enforcement of said Act would not be carried out in any unreasonable, arbitrary or oppressive manner. However, (although not conceded by the defendant to be the fact) it is the testimony of the plaintiffs that the method of enforcement of said Act by penalty as provided therein, if strictly and vigorously adminstered, would afford an opportunity for many separate arrests, fines and imprisonments of the plaintiffs or their employees, each day that such business is carried on, if the instruments referred to herein or any of them should be construed to be taxable under the Act in question.

30. Stamps required by said Act to be affixed to documents may be purchased in any amount desired, in advance of their use for such purpose. As construed by defendant the Act would require such stamps to be affixed to a document in connection with each separate purchase and sale transaction which is made as described herein. Each busi- [fol. 104] ness day each plaintiff firm handles hundreds of such transactions which originate in their Florida branch offices.

Dated March 9th, 1934.

Charles A. Carroll, Shutts & Bowen, by Charles A. Carroll, Joseph F. McPherson, all of Miami, Florida, Attorneys for Plaintiffs. Cary D. Landis, Attorney General of Florida, by Robert J. Pleus, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General of Florida; H. E. Carter, J. V. Keen, Assistant Attorneys General of Florida, all of Tallahassee, Florida, Attorneys for Defendant.

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933

BUY 100 U. S. STEEL 43.

#2437

1033AMf

EXHIBIT 1

FEB 6 1934

No. 71 New York,_____193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON

Receive from_____
(Deliverers Name and Number Stamp)

BROKER	Line No.	RECEIVE FROM	SHARES	SECURITY	PRICE	AMOUNT
TOOLIN	614	SCHOLLE	100	AL AMER INTL	10/1/8	101250
Deliverers	Line No.					

EXHIBIT 2

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19____

BOUGHT 100 U S Steel 43

#2437

127 amf

Exhibit 3

FEB 6 1934

Stock Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York,_____193

We have this day BOUGHT for your account and risk on the New York Stock Exchange

BROKER	Line NO.	OF WHOM BOUGHT	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.			TOTAL AMOUNT	FOR WHOSE ACCOUNT
TOOLIN	614	SCHOLLE	100	AL	AMER INTL	10 1/8	101250	1250			102500	RICHARD DOE

Thomson & McKinnon

E. & O. E.

Per_____

Exhibit 4.

No. 205

New York, OCT 23 1933 193

H. CONTENT & CO.
111 Broadway New York

Subject to the Revenue Act of 1926, and Regulations made in accordance therewith.

SOLD TO

BROKER	Line No.	SOLD TO	SHARES	SECURITY		PRICE	AMOUNT
SP	164	THOMSON	100	MTY	MC INTYRE	33 1/2	335000

Receivers Line No.

U STOCK S Documentary CONTENT & CO. CENTS TRANSFER I R

U S STOCK Documentary - 20 - CENTS TRANSFER I R

STATE OF NEW YORK 4 DOLLARS stock transfer

Exhibit 5.

THOMSON & McKINNON
11 Wall Street

CUSTOMER'S RECEIPT

Enclosed please find securities as follows:

New York, 193

DELIVERED TO	NUMBER OF SHARES	DESCRIPTION	ACCOUNT	NUMBERS
	100	COLUMBIA GAS & ELECTRIC CORP	JANE DOE M1 4106	CN 225211

MISS JANE DOE
700 N. E. 63RD STREET
MIAMI FLORIDA

Received the above mentioned securities

193

IMPORTANT: Kindly sign and return at once.

Exhibit 6.

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933

SELL 100 U S STEEL 43¼

#2185

1022a

Exhibit 7

No. 71 New York, FEB. 6 1934 193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON,

Deliver to_____
(Receivers Name and Number Stamp)

BROKER	Line No.	DELIVER TO	SHARES.	SECURITY	PRICE	AMOUNT
TEFFT	360	DRYSDALE	100	AFW AM FOR POW	13	130000

Receivers Line No.

Exhibit 8.

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19___

SOLD 100 U S Steel 43¼

#2185

1103amf

Exhibit 9

Stock
Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York, FEB 6 1934 193

We have this day SOLD for your account and risk on the New York Stock Exchange

BROKER	Line No.	TO WHOM SOLD	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.	STATE	FEDERAL	TOTAL AMOUNT	FOR WHOSE ACCOUNT
BEB	388	MEEHAN	100	CV	COMM SOLVENTS	341/8	341250	1500	400	500	338850	JOHN ROE SX 763

E. & O. E.

Thomson & McKinnon

Per_____

Exhibit 10

No. 71

New York, FEB 6 1934 193

THOMSON & McKINNON
11 Wall Street New York

Subject to the Revenue Act of 1926 and Regulations made in accordance therewith

SOLD TO_____

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT
BEB	388	MEEHAN	100	CV COMM SOLVENTS	341/8	341250
Receivers	Line No.					

Exhibit 11

Form 26

THOMSON & McKINNON

_____19__

A 2000 RECEIVED FROM_____

This is a Memorandum Receipt.
The Original acknowledgment will be made from our New York Office.

Exhibit 12

[fol. 111]

Form No. 2.

Sheet No. —.

Account No.—.

8—944

John Doe, Miami, Florida.

EXHIBIT 13

Thomson & McKinnon

Date	Securities Bought or received	Securities Sold or delivered	Description	Price	Debit	Credit	Balance	Date
1933			Balance					
Dec. 31	Long	...	...	....	.....	.....	267.97 Cr*	Dec. 31, 33
.....	100	...	City Stores	....	.....	.....	.....	.....
Jan. 4	...	...	Paid at Miami	....	100.00	.....	167.97 Cr.*	Jan. 3, 34
Jan. 8	...	100	City Stores	1	.....	85.50 Cr.	253.47 Cr.*	Jan. 8, 34
Jan. 15	100	...	Chgo. Milw. & St. Paul Pfd.	7¾	782.50	.....	529.03	Jan. 15, 34
Jan. 15	...	...	Trf. from Commodity a/c	....	.....	212.30 Cr.	316.73	Jan. 15, 34
Jan. 18	...	100	Chgo. Milw. & St. Paul Pfd.	9	.....	885.50 Cr.	568.77 Cr.*	Jan. 18, 34
Jan. 19	100	...	Chgo. North West	9	907.50	.....	338.73	Jan. 19, 34
Jan. 20	...	...	Check	....	.....	350.00 Cr.	11.27 Cr.*	Jan. 20, 34
Jan. 22	100	...	Chgo. Milw. & St. Paul Pfd.	9½	957.50	.....	.....	.....
.....	...	100	Chgo. North West	9¼	.....	910.50 Cr.	35.73	Jan. 22, 34
Jan. 22	...	...	Cash	....	.....	100.00 Cr.	64.27 Cr.*	Jan. 22, 34
Jan. 23	100	...	Chgo. North West	10⅛	1,025.00	.....	960.73	Jan. 23, 34
Jan. 25	...	100	Chgo. North West	10⅝	.....	1,043.00 Cr.	82.27 Cr.*	Jan. 25, 34
Jan. 25	...	...	Paid at Miami	....	50.00	.....	32.27 Cr.*	Jan. 25, 34
Jan. 29	...	100	Chgo. Milw. & St. Paul Pfd.	10⅛	.....	993.00 Cr.	1,025.27 Cr.*	Jan. 29, 34
Jan. 31	100	...	Chgo. Milw. & St. Paul Pfd.	10	1,012.50	.....	12.77 Cr.*	Jan. 31, 34
Jan. 31, 34	Long	...	Chgo. Milw. & St. Paul Pfd.	....	.....	.....	.....	.....
.....	100	...	.....	....	.....	.....	.....	.....

* Red in copy.

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[fol. 112]

EXHIBIT 14

Made by Irving-Pitt Division, Wilson-Jones Co., U. S. A.

Mr. Foster's Store

(The Foster & Reynolds Co.)

(100 E. Flagler St., Phone 26556)

Miami, Fla.

Sheet No.—.
Account No. 2472.
Rating:—. Credit Limit:—. Name: John Doe.
Business:—. Address: Miami, Fla.

Loose HP Leaf, Size 1017, Form 5.

Date 1933	Items	Folio	Debits	Date 1933	Items	Folio	Credits
Dec. 31....	Long 100 Cities Stores A.....	.....	.....	Dec. 31..	Credit Balance.....	.....	267.97
	Long 2 May Corn.....	505/8	.....	" 31..	Con. Credit Balance.....	.....	164.90
1934				1934			
Jan. 2....	2 May Oats.....	375/8	.....	Jan. 3..	2 May Corn.....	52	.....
" 4....	Funds.....	.....	100.00	" 12..	2 May Oats.....	377/8	.....
" 11....	100 St. Paul Pfd.....	73/4	782.50	" 4..	100 City Stores.....	1	85.50
" 17....	100 Chi. Northwestern.....	9	907.50	" 16..	100 St. Paul Pfd.....	9	885.50
" 18....	100 St. Paul Pfd.....	91/2	957.50	" 17..	100 Chi. Northwestern.....	91/4	910.50
" 19....	100 Chi. Northwestern.....	101/8	1,025.00	" 19..	Ck. Flo. Nat'l Bk. & Trust.....	.....	350.00
" 25....	Funds.....	.....	50.00	" 22..	Currency.....	.....	100.00
" 29....	100 St. Paul Pfd.....	10	1,012.50	" 23..	100 Chi. Northwestern.....	105/8	1,043.00
				" 25..	100 St. Paul Pfd.....	101/8	993.00

[fols. 113–116] Exhibit 15 omitted, see exhibit No. 11, printed side page 44 ante.

[fol. 117] EXHIBIT 16

Letterhead of Shutts & Bowen, Miami, Florida

October 20, 1931.

Hon. Ernest Amos, Comptroller of the State of Florida, Tallahassee, Florida.

Re Documentary Stamp Tax, Senate Bill 196-XX

DEAR SIR: We have been asked by one of our clients, Thomson & McKinnon, a partnership doing a stock and bond brokerage business, to render it an opinion concerning the effect of the above law on its transactions as brokers, and their liability thereunder.

In pursuance of our client's request, we have made a careful investigation with reference to the interpretation of this law, and have arrived at certain conclusions which we hereinafter set forth. However, before rendering this opinion to our client, we would appreciate very much your views as to the correctness of our conclusions.

Our client is a partnership which operates in Florida through several branch offices or agencies. The business of these agencies consists wholly of acting as agents for buyers and sellers of stocks and bonds, and no person in the service of Thomson & McKinnon is employed on a commission basis, but all are on a straight salary. None of these stocks and bonds, however, are bought or sold in the State of Florida, all purchases and all sales being made in the State of New York.

The mechanics of the purchase of a certificate of stock by a purchaser located in Florida, through one of the branch agencies of Thomson & McKinnon are as follows:

The prospective purchaser delivers to one of the employees of a branch agency of Thomson & McKinnon sufficient money to pay for the stock he contemplates purchasing, together with an order which reads substantially as follows "Buy 100 shares of U. S. Steel at market price (Signed) John Doe." This order and the money are then

transmitted by the branch agency to the principal office of Thomson & McKinnon in New York State. Upon receipt of the order by Thomson & McKinnon in New York State, they buy the stock in the New York market for the Florida purchaser, charging him a certain fee for their services, and send the purchaser notice that the purchase has been made for him. If the Florida purchaser requests delivery of the certificates, they are then forwarded by Thomson & McKinnon in New York directly to the purchaser in Florida, by United States mail. If delivery is not requested, [fol. 118] the certificates are held by Thomson & McKinnon in New York subject to disposition by the purchaser. A great percentage of transactions are made without delivery of the certificates, Thomson & McKinnon usually being advised to sell for the recent purchaser within a short time after the consummation of the transaction, in which latter event no certificate is ever delivered in the State of Florida, the only result of such a transaction being the delivery of money.

Under the foregoing circumstances and assuming that none of the stock dealt in is stock of Florida corporations, we have reached the conclusion that neither our client nor its employees would be liable under the stamp tax act for failure to affix stamps or see that they are affixed, because:

(1) A statute of Florida cannot operate beyond the territorial limits of the State, and neither Thomson & McKinnon nor the purchaser can require a foreign seller of such stock certificates to make and deliver to the buyer or to any one else a memorandum of such sale; hence, neither Thomson & McKinnon nor its employees could be liable for that over which they have no control.

(2) Stock certificates are a species of property which s a common subject of barter and sale, and hence the subject of interstate commerce. Under the circumstances outlined above, where a certificate is delivered, the transaction is one of interstate commerce, because it is essentially a transaction where a resident of one State forwards money to a resident of another State, and receives in return by transportation between those States a thing of barter and sale, the fact that the transaction is made through an agent being immaterial. Consequently, the Florida stamp tax cannot

apply, because of a State's inability to tax interstate commerce. There might be some contention as to whether or not a stock certificate is a subject of interstate commerce; however, we feel that in view of the decision of the United States Supreme Court in the case of Champion v. Ames, reported in 47 L. Ed. at page 492, wherein lottery tickets, which are certainly nothing more than evidence of a mere contingent right, were held to be subjects of interstate commerce, stock certificates are a subject of interstate commerce.

(3) The order above referred to which the prospective purchaser hands to an employee of Thomson & McKinnon, ordering the purchase of certain stock for him, is not a memorandum of a sale nor an agreement to sell, nor is it any evidence of a transfer, but simply an authorization of the principal to his agent to offer certain things for sale.

(4) The notice which is forwarded by Thomson & McKinnon to the Florida purchaser, notifying him that the purchase has been made for him, is not an agreement to sell, nor a memorandum of the sale, nor a transfer of the title, but is nothing more than a notification by an agent to his principal that the principal's instructions have been carried out.

[fol. 119] (5) The delivery of the stock certificates is not made by any person in Florida, but as above noted delivery is made by parties in New York State directly to the purchaser in Florida, by mail.

The mechanics of a sale of stock certificates by an owner located in Florida through one of the branch offices of our client are practically the same as the mechanics of a purchase, to-wit:

If a Florida owner has certificates in his possession which he desires to sell, he hands them to a Florida employee of Thomson & McKinnon, together with a written order directing Thomson & McKinnon to sell the certificates at the market, or at a fixed price. This order to sell is then transmitted to the principal office of Thomson & McKinnon in New York State. The certificates are then offered for sale in New York State, the certificates being forwarded to New York State from Florida, the purchase money being forwarded from New York State to Florida.

Under these circumstances, assuming that none of the stock dealt in is stock of Florida Corporations, we have also concluded that neither Thomson & McKinnon nor its employees would be liable under the stamp tax act, for failure to affix stamps or see that they are affixed, because:

(1) The seller could not be required to make a memorandum of sale at the time he delivers the certificates to Thomson & McKinnon, because at that time no sale has been made, the transaction having proceeded no further than an offer to sell.

(2) When the order to sell is transmitted to New York State, all control over the Florida seller is lost by the local representatives of Thomson & McKinnon, and they could not enforce the making of a memorandum of sale by the seller after the sale is made, because their only function is to forward the certificates and the offer to sell them, the sale being made in New York State by agents of the seller in that State.

(3) As hereinbefore noted, the transaction is one of interstate commerce, and hence not taxable by the State of Florida.

(4) The order or authorization handed the employee of Thomson & McKinnon by the prospective seller authorizing the sale cannot be construed to be an agreement to sell, because the purchaser, if there be one, cannot be known, nor is it a memorandum of a sale, because no sale has yet been made.

(5) The fact that the certificate was delivered by the owner to an employee of Thomson & McKinnon for the purpose of selling it in New York State for the owner would not make that delivery taxable under the act, because the act only purports to tax a delivery which occurs in consequence of a sale of the certificate or an interest therein; the delivery of the certificate to Thomson & McKinnon [fol. 120] passes no title whatever, the title remaining in the Florida seller until the actual sale in New York State.

We feel that the conclusions reached by us under the circumstances outlined above—that there would be no liability under the law being considered—are well founded and supported by the several reasons noted.

We shall appreciate your advising us of your views in the matter.

Very truly yours, Shutts & Bowen, by H. N. Boureau.

HNB. jm.

[fol. 121] EXHIBIT 17

Letterhead of Shutts & Bowen, Miami, Florida

October 27, 1931.

Hon. Ernest A. Amos, Comptroller of the State of Florida, Tallahassee, Florida.

DEAR SIR: We have your letter of October 24, 1931, in answer to our communication of October 20th in relation to the stock brokerage firm of Thomson & McKinnon, of New York, who have branch offices in Florida.

On the facts as set forth in that communication, our office concluded that the documentary stamp tax law did not apply to transactions of the nature stated in our letter. Before advising our client to that effect, we desire an expression from you as to whether or not your office agrees with our conclusion.

We would appreciate it if you would review the facts contained in our letter of October 20, 1931, as we feel your letter as a whole does not answer our inquiry, although its third paragraph may in effect be an answer, though our inquiry was broader. Briefly, our view is that the documentary stamp tax does not apply to transactions in the nature of the sale or purchase of stocks, other than Florida stocks, on the New York Stock Exchange or similar exchanges, although the order for the sale is given through a Florida branch. Our letter of October 20th set forth in detail the reasoning by which we reached such a conclusion.

Our inquiry was intended to be directed to the sales of stock under such circumstances, and not to the actual issuance of the certificates, and arose because of the provisions of the first few lines of the third paragraph of Schedule A of the Act.

Thanking you for your courteous and kind attention to this matter, we are

Respectfully yours, Shutts & Bowen.

PGP-MR.

[fol. 122] EXHIBIT 18

Postal Telegraph Day Letter

Miami, Florida, January 5, 1932.

Hon. Ernest Amos, Comptroller, Tallahassee, Florida.

Re documentary stamp tax Thomson and McKinnon New York stock brokers have local offices in Florida where orders for the purchase and sale of stock in New York are handled on the various stock exchanges stop when a purchase or sale has been made in New York for a customer in Florida that customer is handed a written statement similar to the following quote sold one hundred shares United States Steel at forty account one twenty three unquote the account number designates the customer stop our letters to you of October twentieth and twenty seventh set up our conclusion as being that stamp tax did not apply to such transactions the reasons therefor being set up in said letters stop your answers of October twenty fourth and November twenty fifth did not directly answer our question but by implication we inferred that you agreed with our conclusion stop it appears to us that the notice given by Thomson and McKinnon is not a memorandum of sale as the act contemplates to be taxable but a mere notice that a purchase or sale has been effected in New York in accordance with the customers instructions stop in order that our client might not hereafter be confronted with complications as to the correctness of our interpretation by your office we would appreciate it if possible if you would advise us whether in your opinion we are correct in our conclusion

Frank B. Shutts.

Chg. Shutts & Bowen, Day Letter.

[fol. 123] EXHIBIT 19

Postal Telegraph

JEB 123 39. Tallahassee, Fla. 6 930A

1932, Jan. 6. A. M. 9/36.

Frank B. Shutts, First National Bank Bldg., Miami, Fla.:

Answering telegram no Florida documentary stamp tax required on such stock sale transactions as mentioned in

your letter October twentieth last except it be on stock of Florida corporations Stop Thompson and McKinnon qualified as dealers under securities act.

Ernest Amos, Comptroller.

[fol. 124] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T-14

JOHN P. BICKELL et al., Co-partners Trading and Doing Business under the Firm Name and Style of Thompson & McKinnon, and Alpheus C. Beane et al., Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs.

vs.

J. M. LEE, as Comptroller of the State of Florida, Defendant

FINAL DECREE GRANTING PERMANENT INJUNCTION—Filed March 10, 1934

This cause coming on for final hearing before this Court composed of the undersigned three Judges, convoked pursuant to Section 266 of the Judicial Code, due and proper notice having been given of the time and place of such hear-[fol. 125] ing; and a stipulation of the facts and evidence having been filed herein, and counsel for the respective parties having been heard, it is, therefore, found and decreed by this Court as follows:

1. The facts and matters set forth in the said stipulation of facts are adopted as the facts of this case and in our opinion sustain the material allegations of the bill of complaint as amended.

2. The facts as found in the opinion of this Court previously filed and adopted, and which was rendered in connection with the granting of the interlocutory injunction herein, are hereby adopted as the findings of this Court on final hearing.

3. The conclusions of law as contained and set forth in the aforesaid opinion are hereby made the conclusions of

law of this Court upon final hearing, except as to the marginal customers agreements being a written obligation to pay money and taxable under the Act in question. This exception is made because it appears from the stipulation of facts, and is conceded by counsel for defendant, that no tax is due thereon under said Act.

It is, therefore, ordered, adjudged and decreed that the interlocutory injunction heretofore granted herein, be, and the same is, hereby made permanent, and that the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, be and they are hereby permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, [fol. 126] Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

Done and ordered at Pensacola, Florida, this 10th day of
[fol. 127] March, A. D. 1934.

N. P. Bryan, U. S. Circuit Judge. Alexander Akerman, U. S. District Judge. Wm. B. Sheppard, U. S. District Judge.

[fol. 128] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR THE ALLOWANCE OF AN APPEAL—Filed March 28, 1934

J. M. Lee, as Comptroller of the State of Florida, defendant in the above entitled cause, feeling himself aggrieved by the final order or decree, of the statutory court convoked under Section 266 of the Judicial Code, entered on the 10th day of March A. D. 1934, prays an appeal therefrom to the Supreme Court of the United States.

The particulars, wherein he considers the final order or decree erroneous, are set forth in the assignment of errors on file in this cause to which reference is hereby made.

[fol. 129] Presented herewith is a typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree in this cause and reference to the statement is hereby made for the contents thereof.

He prays that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Defendant.

[fol. 130] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 28, 1934

Comes now J. M. Lee, as Comptroller of the State of Florida, Defendant in this cause, and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal from the Final Decree made and entered in this cause on the 10th day of March, A. D. 1934, and says that the Court erred in the following respects;

First Assignment of Error

The Court erred in failing to find that there is a complete [fol. 131] and adequate remedy and relief at law afforded to the Plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that Plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

Second Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 106 of the (typewritten) transcript of the record.

Third Assignment of Error

The court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 107 of the (typewritten) transcript of the record.

Fourth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually re-

strained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, [fol. 132] as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Fifth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 109 of the (typewritten) transcript of the record.

Sixth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein if permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 110 of the (typewritten) transcript of the record.

Seventh Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 112 of the (typewritten) transcript of the record.

[fol. 133] Eighth Assignment of Error

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth

Amendment to the Constitution of the United States of America.

Ninth Assignment of Error

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Tenth Assignment of Error

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memo- [fol. 134] randum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges lo-

cated outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

Eleventh Assignment of Error

The Court erred in not dismissing the Bill of Complaint.

Twelfth Assignment of Error

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the Plaintiffs and against the Defendant.

[fols. 135-144] Wherefore, the Defendant prays that said Final Decree may be reversed and for such other and further relief as to the Court may seem just and proper.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Defendant.

[fol. 145] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed March 28, 1934

This cause coming on this day to be further heard upon the petition filed by J. M. Lee, as Comptroller of the State of Florida, for an order allowing an appeal, and it appearing to this Court that he has presented with his petition for an order allowing an appeal his assignment of errors and a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree in this cause as required by Rule 12 of the Rules [fol. 146] of the Supreme Court of the United States.

It is hereby ordered by the court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States, from the final order or decree rendered in this cause, on March 10, A. D. 1934, and that said defendant give a bond with good and sufficient security in the sum of Two Hundred and Fifty ($250.00) Dollars, conditioned that he, as appellant, shall prosecute his appeal to effect and answer all costs if he fails to make his plea good; said bond to be approved by the Court.

Done and ordered at Pensacola, Florida, this 28th day of March, A. D. 1934.

Wm. B. Sheppard, Judge of the District Court of the United States, in and for the Northern District of Florida.

[fols. 147-149] Bond on Appeal for $250.00, approved and filed March 28, 1934, omitted in printing.

[fols. 150-156] Citation in usual form showing service on Shutts & Bowen, filed March 28, 1934, omitted in printing.

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO THE CONTENTS OF THE TRANSCRIPT OF THE RECORD PURSUANT TO RULE 10 OF THE SUPREME COURT OF THE UNITED STATES

It is stipulated by and between the parties to this cause, by their undersigned solicitors, that the Clerk of the Court shall include in the transcript of the record of this cause the following described papers and none other, to-wit:

1. Bill of Complaint and all exhibits attached thereto, filed December 11, A. D. 1933.
2. Order convoking Court, filed December 11, A. D. 1933.
3. Notice of Hearing, filed December 12, A. D. 1933.
4. Motion to Dismiss, filed December 21, A. D. 1933.
5. Answer, filed December 21, A. D. 1933.

6. Order extending temporary restraining order, filed December 21, A. D. 1933.

[fol. 158] 7. Amendment to Bill, filed January 1, A. D. 1934.

8. Interlocutory Injunction, filed January 24, A. D. 1934.

9. Opinion, filed January 24, A. D. 1934.

10. Stipulation amending Bill of Complaint to change name of plaintiff firm, filed March 10, A. D. 1934.

11. Stipulation of Facts, and all exhibits attached thereto, filed March 10, A. D. 1934.

12. Final Decree, filed March 10, A. D. 1934.

13. Petition for Appeal, filed March 28th, A. D. 1934.

14. Assignment of Errors, filed March 28th, A. D. 1934.

15. Jurisdictional Statement, filed March 28th, A. D. 1934.

16. Order allowing appeal, filed March 28th, A. D. 1934.

17. Bond for Costs, filed March 28th, A. D. 1934.

18. Citation to Appellees and Proof of Service thereof, filed March 28th, A. D. 1934.

19. Proof of Service upon Appellees of the following papers: (1) A copy of petition for appeal; (2) A copy of order allowing the appeal; (3) A copy of the assignment of errors; (4) A copy of the jurisdictional statement; (5) A statement directing attention of the appellees to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed the 4th day of April, A. D. 1934.

20. Statement of Appellees: (1) Waiving their right to file the statement and motions permitted under Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States; (2) Requesting the Clerk to proceed forthwith with the preparation of the transcript of the record without waiting the 15 days mentioned in Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed the 4th day of April, A. D. 1934.

21. This Stipulation.

Shutts & Bowen, Charles A. Carroll, Joseph F. McPherson, all of Miami, Florida, Solicitors for Ap-
[fol. 159] pellees. Cary D. Landis, Attorney General of the State of Florida. H. E. Carter, Assistant Attorney General. Robert J. Pleus, Assistant Attorney General. J. V. Keen, Assistant Attorney General.

[fols. 160 & 161] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 162] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF THE PARTS OF THE RECORD WHICH APPELLANT THINKS NECESSARY FOR THE CONSIDERATION OF THE APPEAL, TOGETHER WITH PROOF OF SERVICE ON APPELLEES—Filed April 12, 1934

Comes now, J. M. Lee, as Comptroller of the State of Florida, appellant herein, by his undersigned solicitors, and sets forth the following statement of the points on which he intends to rely in seeking a reversal of the final decree in this cause, to-wit:

First Point

The Court erred in failing to find that there is a complete and adequate remedy and relief at law afforded to [fol. 163] the Plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that Plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

Second Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Third Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda

as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 107 of the (typewritten) transcript of the record.

Fourth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually re-
[fol. 164] strained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Fifth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as aplied to documents, instruments or memoranda as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 109 of the (typewritten) transcript of the record.

Sixth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 110 of the (typewritten) transcript of the record.

Seventh Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the
[fol. 165] provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 112 of the (typewritten) transcript of the record.

Eighth Point

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Ninth Point

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida, and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Tenth Point

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, [fol. 166] employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall

request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or [fol. 167] any of their servants, agents or employees.

Eleventh Point

The Court erred in not dismissing the Bill of Complaint.

Twelfth Point

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the Plaintiffs and against the Defendant.

The entire transcript of the record as certified to by the Clerk of the District Court of the United States, In and For the Northern District of Florida, and filed in this Court is deemed necessary to be printed for the consideration of the points above set out.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Appellant.

[fols. 168 & 169] Service of the foregoing and receipt of a copy thereof is hereby acknowledged.

The Appellant's foregoing direction to the Clerk for printing the entire transcript of record (excepting, however, repetitions of titles, styles of Court, etc., as referred to in Rule 13, par. 9) as being necessary for consideration of the cause, and for the Appellant's request that all such papers be included in the printed record, is hereby concurred in and joined in by the Appellees.

Dated at Miami, Florida, this 7th day of April, A. D. 1934.

Shutts & Bowen, by Charles A. Carroll; Charles A. Carroll, Joseph F. McPherson, All of Miami, Florida, Solicitors for Appellees.

[fol. 170] [File endorsement omitted.]

Endorsed on cover: File No. 38,547. N. Florida, D. C. U. S. Term No. 944. J. M. Lee, as Comptroller of the State of Florida, Appellant, vs. John P. Bickell, George B. Buchanan, Alfred W. Mansfield, et al., etc. Filed April 9, 1934. File No. 944, O. T., 1933.

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IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

No. T-Eq. 14.

JOHN P. BICKELL, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THOMSON & McKINNON, AND ALPHEUS C. BEANE, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF FENNER & BEANE,

Plaintiffs,

vs.

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,

Defendant.

JURISDICTIONAL STATEMENT.

Comes now J. M. Lee, as Comptroller of the State of Florida, appellant herein, and submits the following statement, particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction, upon appeal to review the final decree entered in this cause on March 10, A. D. 1934, wherein the Comptroller of the State of Florida was permanently and perpetually restrained and enjoined from the enforcement or execution of Chapter 15,787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, in the particulars set out in the final decree:

1.

The statutory provision believed by appellant to sustain the jurisdiction of the Supreme Court of the United States, is Section 266 of the Judicial Code, the same being Section 380 of Title 28 of U. S. C. A.

2.

The validity of Chapter 15,787, Laws of Florida, Acts of 1931, is involved in this cause, and said statute reads as follows:

"CHAPTER 15787—(No. 69).

AN ACT Levying and Imposing an Excise Tax on Documents to raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

SECTION 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bond, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each $100 of the face value or fraction thereof, 10¢, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10¢: Provided, that where a certificate is issued without face value, the tax shall be 10¢ per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10¢ on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof, 10¢; and where such shares are without par or face value, the tax shall be 10¢ on the transfer or sale or agreement to sell on

each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided; or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10¢. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor,

10¢: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing then in such event the tax shall be at the rate of 10¢ for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10¢ each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10¢.

SECTION 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the taxpayer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

SECTION 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

SECTION 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or

fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or wilfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

SECTION 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

SECTION 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the

credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

SECTION 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Approved July 28, 1931."

The above and foregoing statute will be found on pages 1398 through 1403, both inclusive, of Volume I of the General Acts and Resolutions adopted by the Legislature of Florida during the Regular and Extraordinary Sessions of the year 1931.

3.

The date of the final decree sought to be reviewed, is March 10, A. D. 1934, and the date upon which the application for appeal is presented is the 28th day of March, A. D. 1934.

4.

The plaintiffs (appellees) in this case are stockbrokers, some of whose members are also members of the New York Stock Exchange, and other stock exchanges operated solely outside of the State of Florida. Each firm of stockbrokers maintains several branch offices in the State of Florida, where they accept orders from customers in Florida to buy or sell stocks and bonds upon stock exchanges operated solely outside of the State of Florida. In pursuing their business in their Florida branch offices, there are made in Florida, either by the customer or by the broker, certain writings or documents as, agreements to sell stocks or bonds, memoranda of sales of stocks or bonds, and memoranda of deliveries of stocks or bonds. These writings or documents are made in Florida in connection with the sale or purchase of stocks or bonds that has, at the time the

writing or document is made, taken place or is ordered to thereafter take place, wholly outside of the State of Florida.

It is the duty of the Comptroller of the State of Florida to enforce the provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, which is quoted in full in paragraph 2 above. The Comptroller claims that the agreements to sell, memoranda of sale, and memoranda of deliveries, which are made in Florida, as above mentioned, were and are subject to the provisions of the Florida Documentary Stamp Tax Act, and pursuant thereto he called upon the plaintiffs to affix the stamps to these writings or documents.

The plaintiffs filed their bill of complaint in the United States District Court for the Northern District of Florida, Tallahassee Division, seeking to enjoin the defendant as Comptroller of the State of Florida, from the enforcement of the Act, as against the plaintiffs, in the respects above mentioned, claiming that if it was enforced in these respects, it would be void because in conflict with:

(1) Clause 3 of Section 8 of Article I of the Constitution of the United States, as this would constitute a direct burden on interstate commerce, in which it is alleged the plaintiffs are engaged; and

(2) Section 1 of the Fourteenth Amendment to the Constitution of the United States, as it would deprive the plaintiffs of their property without due process of law, and by denying to them, within the jurisdiction of the State of Florida, the equal protection of the laws.

A three-judge statutory court convoked under Section 266 of the Judicial Code, being Section 380 of Title 28, U. S. C. A., upon a hearing granted an interlocutory injunction, which was filed January 24, A. D. 1934, restraining and enjoining the defendant as Comptroller of the State of Florida, from enforcing the Florida Documentary Stamp

Act, as against the Plaintiffs, in the respects above mentioned. The court set out in its opinion thereon, which was filed on January 24, A. D. 1934, that the Act, if enforced, as contended for by the defendant as Comptroller of the State of Florida, would result in taxing property beyond the jurisdiction of the State, and that this would have the effect of taking the property of the plaintiffs without due process of law, and that the Act was therefore void to that extent, because it was in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States.

On March 10, A. D. 1934, the court entered its final decree permanently and perpetually restraining and enjoining the defendant as Comptroller of the State of Florida, from enforcing the Florida Documentary Stamp Tax Act, as against the plaintiffs, in the respects above pointed out, and the court in the final decree adopted the findings of fact and the conclusions of law as set out in the opinion of the court, above mentioned.

The following cases are believed by appellant to sustain the jurisdiction of the Supreme Court of the United States, in respect to this appeal, to wit:

Herkness v. *Irion*, 278 U. S. 92, 49 S. Ct. Rep. 40, 73 L. Ed. 198;

Oklahoma Natural Gas Co. v. *Russell*, 261 U. S. 290, 43 S. Ct. Rep. 353, 67 L. Ed. 659;

Clark v. *Poor*, 274 U. S. 554, 47 S. Ct. Rep. 702, 71 L. Ed. 1199;

Van Dyke v. *Geary*, 244 U. S. 39, 37 S. Ct. Rep. 483, 61 L. Ed. 973;

Interstate Busses Corp. v. *Blodgett*, 276 U. S. 245, 48 S. Ct. Rep. 230, 72 L. Ed. 551;

Graniteville Mfg. Co. v. *Query*, 283 U. S. 376, 75 L. Ed. 1126.

The appellant now submits that the Supreme Court of the United States has jurisdiction of this appeal and that the appellant is entitled to be heard as of right upon appeal pursuant to Section 266 of the Judicial Code, the same being Section 380 of Title 28 of U. S. C. A.

All of which is respectfully submitted,

CARY D. LANDIS,
Attorney General of the State of Florida;
H. E. CARTER,
Assistant Attorney General;
ROBERT J. PLEUS,
Assistant Attorney General;
J. V. KEEN,
Assistant Attorney General;
All of Tallahassee, Florida,
Solicitors for Appellant.

(4846-C)

FILE COPY

APR 16 1934
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,
Appellant,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, ET. AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

MOTION TO ADVANCE.

CARY D. LANDIS,
H. E. CARTER,
ROBERT J. PLEUS,
J. V. KEEN,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,
Appellant,

vs.

JOHN P. BICKELL, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THOMSON & McKINNON, AND ALPHEUS C. BEANE, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF FENNER & BEANE,
Appellees.

MOTION FOR AN ORDER ADVANCING THE CASE ON THE DOCKET.

Comes now J. M. Lee, as Comptroller of the State of Florida, appellant herein, and moves the Court to enter an order advancing this case on the docket so that the same may be disposed of at the present term of the Court. In support of the motion, the appellant says:

That he is now, and has been at all times since January, A. D. 1933, the duly elected and acting Comptroller of the State of Florida; that as Comptroller he receives all moneys paid to the State of Florida as taxes and that he keeps proper records of all moneys received by the State from all sources, including taxes; that he is the disbursing

officer of the State and all bills and accounts against the State must be audited by him, and if found correct, paid by warrant drawn by him on the State Treasurer and countersigned by the Governor; that he is charged with the enforcement of Chapter 15,787, Laws of Florida, Acts of 1929, known as the Florida Documentary Stamp Tax Act.

That the following is a brief statement of the matter involved in this case:

The appellees in this case are stockbrokers, some of whose members are also members of stock exchanges operated solely outside of Florida. Each firm of stockbrokers maintains several branch offices in Florida where they accept orders from customers to buy or sell stocks and bonds upon stock exchanges located outside of Florida. In pursuing their business in their Florida branch offices, there are made by the customer or the broker, certain writings or documents such as, agreements to sell stocks or bonds, memoranda of sales of stocks or bonds and memoranda of deliveries of stocks or bonds. These writings or documents are made in Florida in connection with the sale or purchase of stocks or bonds that has, at the time the writing or document is made, taken place or is ordered to thereafter take place, wholly outside of Florida. The appellant claims that the writings or documents above described, which are made in Florida, were and are subject to the provisions of the Documentary Stamp Tax Act. The appellees filed their Bill of Complaint in the United States District Court in and for the Northern District of Florida, seeking to enjoin the appellant from enforcing the Act in reference to the writings or documents above set forth, claiming that the enforcement thereof would violate Clause 3 of Section 8 of Article I of the Constitution of the United States, as this would constitute a direct burden on inter-

state commerce, in which it is alleged the appellees are engaged, and Section I of the Fourteenth Amendment to the Constitution of the United States, as it would deprive the appellees of their property without due process of law, and by denying to them the equal protection of the laws. A three-judge statutory court granted an interlocutory injunction restraining the appellant from enforcing the Act in respect to the writings and documents above mentioned, and upon final hearing the court granted a permanent injunction upon the theory that the enforcement of the Act as above set out would bring the Act in conflict with Section I of the Fourteenth Amendment to the Constitution of the United States in that it would have the effect of taking the property of the appellees without due process of law. This appeal is taken from this final decree.

The apellant respectfully suggests the following reasons as to why this motion should be granted:

That all money collected from the enforcement of the Documentary Stamp Tax Act, less the expenses of collection, is paid into the General Revenue fund of the State; that from this fund are paid all salaries and other operating expenses of the following institutions maintained by the State:

The Florida State Farm at Raiford, Florida, which is the State Prison, with 3,800 inmates;

Florida State Hospital for the Insane at Chattahoochee, Florida, with 3,900 inmates;

The Florida Industrial School for Boys at Marianna, Florida, with 600 inmates;

The Florida Industrial School for Girls at Ocala, Florida, with 100 inmates;

A Home for Confederate Veterans at Jacksonville, Florida, with 40 veterans;

That from this fund is also paid all salaries of the Educational Institutions maintained by the State of Florida, to-wit:

The University of Florida at Gainesville, Florida, with an enrollment of 2,000 students;

The Florida State College for Women at Tallahassee, Florida, with an enrollment of 1,600 students;

The Florida School for the Deaf and Blind at St. Augustine, Florida, with an enrollment of 300 students;

The Florida Agricultural and Mechanical College for Negroes at Tallahassee, Florida, with an enrollment of 600 students;

That from this fund is also paid the salaries of the Governor and members of the Cabinet and their employees, and the salaries of the officers and employees of the State Board of Health.

At the present time a sufficient amount of revenue is being collected to pay the expenses and salaries above set forth as and when they become due; that it is estimated that beginning with the month of July and continuing through the month of December of this year, there will be a monthly deficit in this fund of approximately $100,000.00 and that this deficit will total approximately $500,000.00 by the first of December of this year; that when this deficit occurs, it will seriously embarrass the State of Florida in the operation of the government, especially in reference to the institutions above referred to.

It is estimated by the appellees, and so stated by them in open court; that if the Documentary Stamp Tax Act is enforced against them the State will derive therefrom revenue in an amount not less than $1,000.00 per day. Pending the determination of this cause, appellant cannot enforce the Act against other stockbrokers operating in the State. It is estimated by the appellant that if he could

enforce said Act against other stockbrokers operating in the State and doing a business similar to the business of the appellees, that the State would derive revenue therefrom in an amount not less than $500.00 per day. If the Court should decide that the Act may be enforced, the State will be virtually deprived of all taxes that accrue until the Court renders its decision, because no bonds have been posted by the appellees or other stockbrokers operating in the State, and it is highly uncertain as to whether or not the State could collect the accrued taxes. If the State should receive $1,500.00 per day from this source, beginning with the first day of July of this year, the above mentioned deficit would be very materially reduced and the embarrassment of the State in not being able to pay its bills and meet its payrolls as above set forth, would be substantially diminished.

The appellant respectfully suggests that this cause should be advanced on the docket for the reason that delay in this Court finally disposing of the matter will cause serious embarrassment in the operation of the government of the State of Florida as above set out.

All of which is respectfully submitted,

J. M. LEE,
As Comptroller of the State of Florida.
By H. J. CHANCE,
As Assistant Comptroller.

CARY D. LANDIS,
As Attorney General of the State of Florida,
H. E. CARTER,
Assistant Attorney General,
ROBERT J. PLEUS,
Assistant Attorney General,
J. V. KEEN,
Assistant Attorney General,
All of Tallahassee, Florida,
Solicitors for Appellant.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on the date herein below set forth, personally appeared before me, H. J. Chance, who being first duly sworn says upon oath that he is Assistant Comptroller of the State of Florida, that he has read the above and foregoing motion for an order advancing the case on the docket and that the matters and things set out therein are true.

H. J. CHANCE.

Sworn to and subscribed before me this 9th day of April, A. D. 1934.

[Seal of Allie Yawn Brown, Notary Public, State of Florida At Large.]

ALLIE YAWN BROWN,
Notary Public,
State of Florida at Large.

My Commission expires 1/13/36.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on this day personally appeared before me J. V. Keen, who, being first duly sworn, says upon oath:

That he is now and has been for some months past Assistant Attorney General of the State of Florida, and that in such capacity he mailed the original and a copy of the above and foregoing Motion to Messrs. Shutts and Bowen of Miami, Florida, counsel of record for appellees in this cause, and that on April 14th, he received a letter from Mes-

srs. Shutts and Bowen returning the original and acknowledging receipt of a copy of the Motion.

J. V. KEEN.

Sworn to and subscribed to before me this 14th day of April, A. D. 1934.

[Seal of Allie Yawn Brown, Notary Public, State of Florida At Large.]

ALLIE YAWN BROWN,
Notary Public,
State of Florida at Large.

My Commission expires 1/13/36.

Supreme Court of the United States

OCTOBER TERM 1933.

No. 944.

J. M. LEE, as Comptroller of the State of Florida,
Appellant,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN,
ALFRED W. MANSFIELD, et al., etc.
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE NORTHERN
DISTRICT OF FLORIDA.

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Supreme Court of the United States

October Term 1933.

No. 944

J. M. LEE, as Comptroller of the State of Florida,
Appellant,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, et al., etc.,
Appellees.

II.

REFERENCE TO OFFICIAL REPORT OF THE OPINION OF THE LOWER COURT.

The opinion of the Lower Court in this case is reported in 5 Federal Supplement 720, March 26, A. D. 1934, Advance Sheet.

III.

STATEMENT OF THE CASE

This is an appeal from a final decree entered in the United States District Court for the Northern District of Florida, by a three-judge Court convoked under Section 266 of the Judicial Code (Title 28, Section 380, U. S. C. A.), whereby the Comptroller of the State of Florida was enjoined from enforcing the Florida Documentary Stamp

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Tax Act against certain stockbrokers in respect to documents made in Florida in connection with the sale or purchase of stocks or securities on stock exchanges outside of Florida, which sales or purchases were made, or may be made, at the request and direction of Florida customers to the Florida branch offices of the brokers. (R. 91)

The bill of complaint was filed in this case on December 11, A. D. 1933, in the United States District Court in and for the Northern District of Florida (R. 6). On the same day the Judge of that Court entered an order convoking a three-judge Federal Court under Section 266 of the Judicial Code (Title 28, Section 380, U. S. C. A.), and requiring the defendant to show cause why an interlocutory injunction should not issue, and granting a temporary restraining order. (R. 1.) On December 21, the defendant filed his motion to dismiss (R. 38), and on the same day he filed his answer to the bill of complaint (R. 39). On December 21, A. D. 1933, a hearing was had before the Court convoked under Section 266 of the Judicial Code, upon application for an interlocutory injunction, the bill of complaint, affidavits in support thereof, and the motion to dismiss the bill of complaint. On January 18, A. D. 1934, the Court issued an interlocutory injunction enjoining and restraining the defendant from enforcing the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, against the plaintiffs, through requiring that any tax provided for by the Act be paid with respect to, for, or by reason of any written communication, document or memorandum, (except marginal agreements) which may have been or may hereafter be delivered, passed or exchanged by plaintiffs and their

Florida customers, or by their Florida customers to the plaintiffs in connection with or in any manner relating to the transactions for the purchase and sale of stocks or securities on exchanges located outside of Florida, which have been or shall hereafter be made by plaintiffs for or on behalf of their Florida customers, who in Florida have ordered, or may hereafter order, the same to be made, and from levying any tax under the Act upon any books, ledgers, records or memoranda in the possession of the plaintiffs, relating to the sales and purchases referred to above (R. 53.). (See copy of Act attached hereto as Appendix A.) On January 24, A. D. 1934, the Court filed its opinion in the cause, which was written in connection with the entry of the interlocutory injunction. (R. 55.) On March 10, A. D. 1934, the plaintiffs and the defendant filed a stipulation of facts, wherein it was agreed that the facts stipulated therein would be used and considered as competent evidence upon final hearing in the cause, in lieu of testimony of competent witnesses in open Court. (R. 59.) On March 10, A. D. 1934, the Court, pursuant to final hearing upon the pleadings and the stipulation of facts above referred to, entered its final decree granting a permanent injunction enjoining and restraining the defendant from enforcing the terms of the Florida Documentary Stamp Tax Act in the manner hereinabove set forth, which permanent injunction followed the terms of the interlocutory injunction, except as to marginal agreements. (R. 91.)

The pleadings and the stipulation of facts (R. 59) in this cause, show the following facts:

The plaintiffs (appellees) are stockbrokers, some of whose members are also members of New York Stock

Exchange and other stock exchanges operated solely outside the State of Florida. Each firm of stockbrokers maintains several branch offices in the State of Florida, where they accept orders from customers in Florida to buy or sell stocks and bonds upon stock exchanges operated solely outside the State of Florida. The following is a brief summary of the business transacted by the plaintiffs (appellees):

(1) As to a purchase of stock for a Florida customer (R. 62):

The Florida customer desiring to have stock purchased for him by one of the plaintiffs (hereinafter referred to as the broker), gives an order to the broker, either in writing or orally, setting forth the stock to be purchased and the terms of the purchase. Upon receipt of the order, the employee of the broker in the Florida branch office communicates the same to the New York office of the broker by telegraph over the broker's leased private telegraph wire. Upon receipt of the order in the New York office, that office proceeds to execute the same on the floor of the New York Stock Exchange, by entering into a contract with some other member of the Exchange for the purchase of the stock. The delivery of the stock to the broker pursuant to this purchase is accompanied by a "sales ticket" which sets forth the transaction, and this "sales ticket" bears the required amount of Federal and New York State Documentary Stamps. Immediately following the making of such purchase of stock on the floor of the New York Stock Exchange, the New York office of the broker communicates to the Florida branch office over the private telegraph wire of the broker, the fact that the purchase has been made. An employee in

the Florida branch office receives or takes off the telegram by typewriter, making an original and a carbon copy thereof. This telegraphic notice of the purchase sets forth the date and time of the purchase, the number of shares, the name of the stock, the price at which bought, and the serial number of the account of the customer who was represented in the transation. It is the practice of the Florida branch office to notify the customer that the purchase has been made, and this notification customarily is given by delivering either the original or a copy of the telegram received from the New York office. The broker sends formal notice of the transaction from its New York office by mail to the Florida customer. After the purchase of the stock on the New York Stock Exchange, the broker delivers it to the Florida customer by sending it by registered mail to him. Upon receipt of the stock, the customer is required to sign a formal receipt therefor, and to return the receipt to the New York office. The receipt is made in Florida and bears the name of the broker, recites the enclosure of certain stocks which are briefly therein described, gives the name of the customer and the serial number of his account, and contains a place for the signature of the customer.

(2) As to the sale of stock for the Florida customer (R. 66):

An order for the sale of stock is placed by the Florida customer with the Florida branch office of the broker. When this order is in writing, it contains a description of the stock to be sold and the name of the customer or his account number. The customer usually signs the order in person, or he authorizes an employee of the Florida branch office of the broker to sign it on his behalf. Occa-

sionally, the name of the customer is used, but usually he signs his account number in lieu of signing his name. If the customer delivers to the Florida branch office of the broker the stock which he authorizes to be sold, the broker executes and delivers in Florida to the customer a receipt therefor. Upon receipt of the order to sell, the Florida branch office of the broker communicates the order over its private telegraph wire to the New York office, and there the order is executed by a member of the broker's firm upon the New York Stock Exchange. At the time of the sale on the New York Stock Exchange, an exchange contract is entered into between the brokers. The delivery of the stock by the broker in New York, pursuant to this sale, is accompanied by a "sales ticket", which bears the required amount of Federal and New York State Documentary Stamps, and contains a description of the stock and the sales price. Immediately following the making of the sale on the New York Stock Exchange, the New York office of the broker notifies the Florida branch office over its private telegraph wire, and this is received and taken off on a typewriter by an employee of the Florida branch office of the broker, who usually make an original and a carbon copy thereof. This notification sets forth the time and date of the sale, the number of shares and the name of the stock, the price at which it was sold, and the serial number of the customer. Upon receipt of this notice, the Florida branch office notifies the customer. This notification is given either orally or by telephone, or by furnishing the customer with the original or a carbon copy of the telegraphic communication. The broker sends a formal notice by mail from New York to the Florida customer, advising him that the sale has been completed. The New York office

of the broker keeps an accurate account of each customer's transactions, and the Florida branch office of the broker keeps a record of these transactions, but such records are not as full and complete as the New York records, and are only intended to be approximately correct, although they do show all sales and purchases made through the Florida office.

J. M. Lee, as Comptroller of the State of Florida, defendant (appellant), is charged with the duty of administering the Florida Documentary Stamp Tax Act. (See Section 2.) The defendant claims that the following documents involved in this suit are subject to the terms and provisions of the Act (R. 62-70):

1. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to purchase certain stocks for him upon a stock exchange located outside of the State of Florida:

(a) The memorandum made by the employee of the Florida branch office of the broker, which shows that the stock has been purchased as requested. This memorandum is taxable under the Act as a memorandum of sale, whether or not the same is delivered to the Florida customer.

(b) If the stock is delivered in Florida by the Florida branch office of the broker, and a receipt is made and delivered in Florida therefor, the same is taxable as a memorandum of delivery of stock.

2. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch

office of the broker to sell certain stocks upon a stock exchange located outside the State of Florida.

(a) The written order of the Florida customer to the Florida branch office of the broker to sell certain stocks, is taxable under the Act as a unilateral agreement to sell.

(b) If the stock, which is ordered by the Florida customer to be sold, is delivered by him to the Florida branch office of the broker, and a receipt is taken therefor, this is taxable as a memorandum of the delivery of the stock.

(c) The memorandum made by the Florida branch office of the sale of the stock, pursuant to the order to sell given by the Florida customer to the Florida branch office of the broker, is taxable as a memorandum of sale, whether or not the memorandum, or a copy thereof, is delivered in Florida to the Florida customer.

3. In the case of a purchase by the broker of stock on the stock exchange in a State other than the State of Florida for a Florida customer, and in the case of a sale of stock on a stock exchange in a state other than the State of Florida, there is made in the books in the office of the Florida branch office, a memorandum of the sale, and if no other memorandum of the sale or of the delivery is made in Florida, then the entry in the books in the Florida office of the broker is taxable under the Act as a memorandum of sale.

The defendant only claims that a tax should be paid upon the instruments or documents actually made in Florida, and that while there may be several of these instruments in connection with the same transaction, which are taxable under the Act, it is conceded by the defendant

that as to a particular purchase or sale, not more than one of such instruments or documents relating thereto would be taxable.

The Act under consideration was passed by the 1931 Legislature. At that time and continuously until January 3, A. D. 1933, the Honorable Ernest Amos was Comptroller of the State of Florida, and during his tenure of office he construed the Act as not being applicable to the transactions above set forth. The defendant herein (appellant) became the Comptroller of the State of Florida on January 3, A. D. 1933, and has held that office continuously since that time. About six months after he became Comptroller, he undertook to enforce the Act against the plaintiffs and other stockbrokers in respect to the instruments and documents above set forth.

A violation of the Act is declared to be a misdemeanor, and is punishable by a fine not to exceed $200.00 or by imprisonment not to exceed 90 days or both in the discretion of the Court. See Section 7104, Compiled General Laws of Florida, 1927.

During each business day the Florida branch offices of the plaintiff firms handle hundreds of transactions and make hundreds of documents, which under the construction of the defendant are subject to the terms of the Act. The stamps required by the Act to be affixed to documents may be purchased in any amount desired in advance of their use for such purpose. The defendant sets up in his answer, and the same is set forth in the stipulation of facts, that his enforcement of the Act would not be carried out in any unreasonable, arbitrary, or oppressive manner. It is contended by the plaintiffs that the method of enforcement of the Act by the penalty as pro-

vided therein, if strictly and vigorously administered, would afford an opportunity for many separate arrests, fines and imprisonments of the plaintiffs or their employees each day that such business is carried on.

The defendant sets up in his answer, and it appears in the stipulation of facts, that he offered to receive tax payments from the plaintiffs on account of the taxes which he claims to be due and to become due under the terms of the Act, and to impound and safely keep the same pending the ultimate and final decision on the Law side of a Court of last resort, whether State or Federal, providing such suit be filed immediately and prosecuted with all reasonable diligence, and providing that such taxes be paid as they become due, and upon the ultimate decision, should it be adjudged that the taxes or any of them are illegally collected, to repay the same in accordance with such final judgment.

Under the terms of the motion to dismiss (R. 38), the defendant took the position that the plaintiffs had a full, complete and adequate remedy at law, and that for that reason, there was no Federal Equity jurisdiction, and that the bill of complaint should be dismissed. The Court considered this motion at the hearing upon the motion for an interlocutory injunction, and in effect denied the same. The Court also considered the motion on final hearing, and in effect denied the same by the entry of the final decree. (R. 91.)

It was contended by the plaintiffs that an enforcement of the Act would violate the following provisions of the Constitution of the United States, to-wit: Clause 3, Section 8, of Article I, by laying an undue burden on interstate commerce, and Section I of the Fourteenth Amend-

ment, by depriving the plaintiffs of their property without due process of law. The Court in its opinion filed on January 24, A. D. 1934 (R. 55), held that the enforcement of the Act against the plaintiffs in the manner set out therein, would result in the State of Florida taxing property beyond its jurisdiction, and this would have the effect of taking the property of the plaintiffs without due process of law, and that the Act was therefore void to that extent because in conflict with Section I of the Fourteenth Amendment. The Court in its final decree adopted the conclusions of law set forth in the opinion (R. 91).

A copy of the opinion of the Court entered on January 24, A. D. 1934 (R. 55), and a copy of the final decree entered on March 10, A. D. 1934 (R. 91), will be found attached hereto as Appendices B and C respectively.

IV.

SPECIFICATION OF SUCH OF THE ASSIGNED ERRORS AS ARE INTENDED TO BE URGED.

FIRST ASSIGNMENT OF ERROR.

The Court erred in failing to find that there is a complete and adequate remedy and relief at law afforded to the plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

SECOND ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually

restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 78 of the transcript of the record.

THIRD ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 79 of the transcript of the record.

FOURTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 80 of the transcript of the record.

FIFTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A.D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda

as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 81 of the transcript of the record.

SIXTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 82 of the transcript of the record.

SEVENTH ASSIGNMENT OF ERROR.

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 84 of the transcript of the record.

EIGHTH ASSIGNMENT OF ERROR.

The Court erred in holding that the enforcement of Chapter 15787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida, in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

NINTH ASSIGNMENT OF ERROR.

The Court erred in holding that the enforcement of Chapter 15787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida, and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida, in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

TENTH ASSIGNMENT OF ERROR.

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State, acting by, through, or under his direction or administration, were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document, or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on exchanges located outside the State of Florida, which have been, or shall hereafter be, made by the plaintiff brokers, or any of

their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

ELEVENTH ASSIGNMENT OF ERROR.

The Court erred in not dismissing the bill of complaint.

TWELFTH ASSIGNMENT OF ERROR.

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the plaintiffs and against the defendant.

All assignment of errors will be argued under each question as hereinafter set out. The Court is requested to consider the argument under each question as severally applicable to each of the assignment of errors.

V.

THE ARGUMENT

STATEMENT OF QUESTIONS INVOLVED.

FIRST QUESTION.

Is there federal equity jurisdiction to enjoin the collection of state taxes when, by the law of the state involved, there is an adequate remedy at law to recover taxes paid under protest, if the same are illegally exacted?

SECOND QUESTION.

Are instruments or documents made in Florida, by a Florida customer or by the employees of a Florida branch office of a firm of stockbrokers, in connection with the sale or purchase of stock for the Florida customer on a stock exchange located outside of Florida, subject to the terms of Chapter 15787, Laws of Florida, Act of 1931?

ARGUMENT ON FIRST QUESTION.

Is there federal equity jurisdiction to enjoin the collection of state taxes when, by the law of the state involved, there is an adequate remedy at law to recover taxes paid under protest, if the same are illegally exacted?

We submit that there is no Federal equity jurisdiction, because appellees have an adequate remedy at law for the recovery of the tax if paid under protest, and thereby giving notice that they will seek its return.

This question includes as subheads matters involving the multiplicity of suits as an independent ground of equity jurisdiction, and the question of a suit against the State.

By an unbroken line of decisions beginning in 1887, the Florida Supreme Court has held that a tax wrongfully collected, if paid under protest, may be recovered by the taxpayer in a suit for money had and received:

CRAWFORD VS. BRADFORD, 23 Fla. 404, 2 So. 782, 784.

FLORIDA PACKING & ICE COMPANY VS. CARNEY, 51 Fla. 190, 41 So. 190;

CROOM AS COMPTROLLER VS. PENNINGTON, 58 Fla. 473, 52 So. 957;

SEABOARD AIRLINE VS. ALLEN, 82 Fla. 191, 89 So. 555.

HAMPTON VS. BOARD OF EDUCATION, 90 Fla. 88, 105 So. 323, 42 A. L. R. 1456.

NEW SMYRNA INLET DISTRICT VS. ESCH, 103 Fla. 75, 137 So. 1; Rehearing denied, 103 Fla. 24, 138 So. 49.

These cases were the basis for the decision of the Circuit Court of Appeals of the Circuit in which Florida lies, in the case of HARJIM VS. OWENS, 64 Fed. (2d) 306. (Cert. den. 78 Law Ed. Adv. Op. No. 1, p. 78). This case held:

> "In such a case, their remedy at law to pay their taxes and sue to recover them back being,

under the decisions of the Florida courts, complete and adequate (Seaboard Air Line R. Co. vs. Allen, 82 Fla. 191, 89 So. 555, 557), federal equity jurisdiction may not be invoked.

* * * * *

" * * *. As to each appellee a single suit at law brought to recover the tax will determine its constitutionality, and no facts are alleged showing that more than one suit will be necessary for that purpose."

The leading case decided by this Court is that of MATHEWS VS. RODGERS, 284 U. S. 521, 76 L. Ed. 447, 52 S. Ct. 217, cited in the Harjim case, supra, and from which we quote as follows:

"Section 16 of the Judiciary Act of September 24, 1789, 1 Stat. at L. 82, Chap. 20, perpetuated without material change as Rev. Stat. 723, U. S. C. title 28, section 384, Judicial Code, Section 267, declares that suits in equity shall not be sustained in the courts of the United States 'in any case where plain, adequate and complete remedy may be had at law.' The effect of this section, which was but declaratory of the rule in equity established long before its adoption, is to emphasize the rule and to forbid in terms recourse to the extraordinary remedies of equity where the right asserted may be fully protected at law. See DeWeese vs. Reinhard, 165 U. S. 386, 389; 41 L. Ed. 757, 758; 17 S. Ct. 340; New York Guaranty & I. Co. vs. Memphis Water Co., 107 U. S. 205, 214; 27 L. Ed. 484, 487, 2 S. Ct. 279.

"The reason for this guiding principle is of peculiar force in cases where the suit, like the present one, is brought to enjoin the collection of a state tax in courts of a different though paramount sovereignty. The scrupulous regard

for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this court for review if any federal question be involved, Judicial Code, Section 237, U. S. C. title 28, Section 344, or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present. See Boise Artesian Hot & Cold Water Co. vs. Boise City, 213 U. S. 276, 53 L. Ed. 796, 29 S. Ct. 426; Shelton vs. Platt, 139 U. S. 591, 35 L. Ed. 273, 11 S. Ct. 646; Dows vs. Chicago, 11 Wall. 108, 110, 112, 20 L. Ed. 65, 66, 67.

"It may be assumed that if appellees do not pay the challenged tax, and in consequence of that omission they are subjected, as it is alleged they will be, to the civil and criminal penalties for nonpayment, the resulting injury to their business will be irreparable and can be avoided only by resort to equity to prevent the threatened wrong. But appellants insist that the appellees are under no such constraint, either to expose themselves to the penalties for failure to pay the tax, or to seek equitable relief against its collection, since each of them may pay the tax to the collecting officer under protest and under the laws of Mississippi, may maintain a suit at law

for its recovery on the ground that it was exacted in violation of the Constitution of the United States. That such a procedure saves to the taxpayer his federal right, and if available will defeat the jurisdiction of federal courts to enjoin the collection of the tax, has long been the settled rule in this Court. Henrietta Mills vs. Rutherford County, 281 U. S. 121, 74 L. Ed. 737, 50 S. Ct. 270; Arkansas Bldg. & L. Asso. vs. Madden, 175 U. S. 269, 44 L. Ed. 159, 20 S. Ct. 119; Atchison T. & S. F. R. Co. vs. O'Connor, 223 U. S. 280, 56 L. Ed. 436, 32 Ann. Cas. 1913-C, 1050; Shelton vs. Platt, 139 U. S. 591, 35 L. Ed. 273, 11 S. Ct. 646, supra; Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481, 484; 57 L. Ed. 1288, 1290, 33 S. Ct. 941, supra; Allen vs. Pullman's Palace Car Co., 139 U. S. 658, 35 L. Ed. 303, 11 S. Ct. 682; Indiana Mfg. Co. vs. Koehne, 188 U. S. 681, 47 L. Ed. 651, 23 S. Ct. 452.

"From an examination of the decisions of the highest court of the State we conclude, as the Attorney General of the State insists, that that procedure is open to the appellees in Mississippi, if the tax is paid under protest, to avoid penalties or criminal proceedings.

* * * * *

"Appellees' bill of complaint does not state a case within the jurisdiction of equity to avoid multiplicity of suits. As to each appellee a single suit at law brought to recover the tax will determine its constitutionality, and no facts are alleged showing that more than one suit will be necessary for that purpose. See Boise Artesian Hot & Cold Water Co. vs. Boise City, 213 U. S. 276, 285, 53 L. Ed. 796, 799, 800, 29 S. Ct. 426; Dalton Adding Mach. Co. vs. State Corp. Commission, 236 U. S. 698, 700, 701, 59 L. Ed. 797, 798, 35 S. Ct. 480."

See also *HENRIETTA MILLS VS. RUTHERFORD*, 281 U. S. 121, 74 L. Ed. 737, 50 S. Ct. 270.

HILL VS. WALLACE, 259 U. S. 44, 66 L. Ed. 822, is distinguishable because it involved a federal statute and the most unusual and extraordinary circumstances necessitating 1600 separate suits to collect what would have amounted to virtually a confiscatory tax.

Unusual circumstances are also involved in

RAYMOND VS. CHICAGO TRACTION COMPANY, 207 U. S. 20, 52 L. Ed. 78, 28 S. Ct. 7.

As to the necessity of more than an allegation of mere anticipated multiplicity of proceedings, either civil or criminal, see DALTON ADDING MACHINE COMPANY VS. STATE CORP COMMISSION, 236 U. S. 699, 700, 701, 59 L. Ed 797, 798, 35 S. Ct. 480, which holds that there was nothing to indicate that the statute would be enforced in an oppressive way, and mere anticipation is not sufficient. To like effect see BOISE ARTESIAN HOT AND COLD WATER COMPANY VS. BOISE CITY, 213 U. S. 276, 53 L. Ed. 796, 29 S. Ct. 426.

As to recovery of taxes paid generally, see 61 C. J. 980, 1002; 26 R. C. L., page 454, et seq. (Cited with approval in Seaboard Airline Railway Co. vs. Allen, supra.)

The following cases are the leading cases dealing with the question of whether such suit amounts to a suit against the State:

OSBORNE VS. BANK OF THE UNITED STATES, 9 Wheat. 738, 6 L. Ed. 204

VIRGINIA COUPON CASES, 114 U. S. 270, 285; 29 L. Ed. 185, 5 S. Ct. 903.

ERSKINE VS. VAN ARSDALE, 15 Wall. 75; 21 L. Ed. 63.

A. T. & S. F. VS. O'CONNOR, 223 U. S. 280, 56 L. Ed. 436, 32 Ann. Cas. 1913-C, 1050.

This last was a suit against the Secretary of State of Colorado to recover taxes paid under protest. The Court held (Holmes, J.):

> "The defendant collected the money and it is alleged that he still has it. He was notified when he received it that the plaintiff disputed his right. If he had no right, as he had not, to collect the money, his doing so in the name of the State cannot protect him. Erskine vs. Van Arsdale, 15 Wall. 75. See Virginia Coupon Cases, 114 U. S. 270.
>
> "It is said that the money as soon as collected belonged to the State. Very likely it would have but for the plaintiffs' claim, assuming it to remain an identified trust fund; but the plaintiffs' claim was paramount to that of the State, and even if the collector of the tax were authorized to appropriate specific money and to make himself debtor for the amount, it would be inconceivable that the State should attempt to hold him after he had been required to repay the same."

On the question of a necessity of a showing as to the multiplicity of suits, see the following cases:

HILL VS. WALLACE, supra, wherein the Court by dictum held that 1600 suits would be necessary, but added:

"The right to sue for an injunction against the taxing officials is not, however, necessary to give us jurisdiction."

WESTERN UNION TELEGRAPH COMPANY VS. NORMAN, 77 Fed. 13—sixty-eight county clerks to be sued.

L. & N. RAILWAY VS. GAINES, 3 Fed. 266—Twelve collectors and forty suits in all necesary to obtain repayment.

CHESAPEAKE AND OHIO VS. MILLER, 19 W. Va. 408, (affirmed without reference to this point, 114 U. S. 176, 29 L. Ed. 121)—State Auditor about to certify tax for collection to officers of all counties.

WILSON VS. ILLINOIS S. R. CO., 263 U. S. 574, 68 L. Ed. 456—Tax paid to five counties and five suits necessary.

HOPKINS VS. SOUTHERN CALIFORNIA TELEGRAPH COMPANY, 275 U. S. 393, 72 L. Ed. 329,—Payment to sixteen cities and right to recover uncertain.

In *INDIANA MANUFACTURING COMPANY VS. KOEHNE*, 188 U. S. 681, 47 L. Ed. 651, it was held that Federal Courts should not on ground of preventing multiplicity of suits, enjoin the collection of an Indiana tax, invalid because repugnant to the Federal Constitution, where it appeared that a statute of that State provided that upon payment of an illegal tax and giving of notice, or bringing of suit against the county for a refund, the county would become a trustee for the claimant and could not avoid full liability by thereafter paying over the funds.

In *DALTON ADDING MACHINE COMPANY VS. STATE CORPORATION COMMISSION*, 236 U. S. 699, 59 L. Ed. 797, a Missouri corporation sought to enjoin enforcement of Virginia statute requiring payment of a fee upon the doing of business, the allegation being that the complainant had reason to fear and did fear the multiplicity of proceedings, the imposition of many fines, and the encouragement of like proceedings in other States; but the injunction was held properly denied upon the ground that there was nothing to indicate that the Virginia statue would be enforced against the complainant in an oppressive way.

It will also be noted that in paragraph 18 of the bill of complaint (R. 22), it is specifically alleged that the rules of the New York Stock Exchange provide as follows:

> "No member shall, directly or indirectly, by agreement or otherwise, assume or bear for his own account, or relieve his principal from any part of any stamp tax imposed by the United States or by any State on transfers or sales of securities."

The bill then alleges that for appellees to comply with the demands of the Comptroller would be a violation of said rule. We submit that these allegations show that under no circumstances could appellees suffer damage, because they could not under the rules of the Exchange pay the tax, but would necessarily pass the tax on to the customer.

Furthermore, we call the Court's attention to Section 4225, Compiled General Laws of Florida 1927, which provides:

> "Causes of action, of whatever kind, by and against the same parties in the same rights, may be joined in the same suit, except that replevin and ejectment shall not be joined together nor with other causes of action."

We submit that this statute specifically allows a joinder in a single suit of all causes of action that might arise by virtue of the payment of the tax, should the same be adjudged to have been illegally exacted, and that in one suit each appellee firm could recover back all that had been paid. There cannot possibly be, therefore, a contention of a multiplicity of suits.

We submit, also, that the single act of each appellee firm in purchasing the stamps necesary for its business would successfully preclude the possibility of multiple arrests and criminal prosecutions (even though the Comptroller intended to resort to such action, which he affirmatively denies, and has testified that he would not do), and then in a single action at law recover back all that should be adjudged to have been illegally exacted.

Appellant in his answer (R. 49) specifically offered to receive the tax payments from appellee firms, to impound the same and securely keep and preserve the same (which, under the decision in Seaboard Airline Railway vs. Allen, supra, he not only has the right, but it would be his duty so to do), pending the ultimate and final decision on the Law side of a Court of last resort, either State or Federal, provided such suit be filed immediately and prosecuted with all reasonable diligence; and upon ultimate decision, if it be adjudged that said taxes were illegally exacted or collected, to repay the same in accordance with such final judgment. This conclusively

obviates any contention that a suit at law would not furnish a complete and adequate remedy.

ARGUMENT ON SECOND QUESTION.

For the convenience of the Court, we repeat the second question:

> **Are instruments or documents made in Florida, by a Florida customer or by the employees of a Florida branch office of a firm of stock-brokers, in connection with the sale or purchase of stock for the Florida customer on a stock exchange located outside of Florida, subject to the terms of Chapter 15787, Laws of Florida, Acts of 1931?**

At the outset it should be stated that it is the contention of the appellant that the tax in question is a tax only upon documents *made in Florida*. The appellant makes no claim that the tax involved in this suit is an excise tax upon any sale or other transaction which takes place in a State or Country other than the State of Florida.

STATUTE INVOLVED.

The parts of the above mentioned Act which are pertinent to the discussion herein read as follows:

Paragraph (1) of Section 1:

> "That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and des-

cribed in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A."

Paragraph (4) of Section 1, being Paragraph (3) of Schedule A.:

"On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the

certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly."

The Florida Documentary Stamp Tax Act was taken in a large measure from the South Carolina Documentary Stamp Tax Act. That part of the South Carolina Act from which the quoted part of the above mentioned Act was taken reads as follows:

"On all sales, or agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or of profits or of interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum of other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest, or rights, or not, on each one hundred ($100.00) dollars of

face value or fraction thereof, four ($0.04) cents, and where such shares are without par or face value, the tax shall be four ($0.04) cents on the transfer of sale or agreement to sell on each share: *Provided, that it is not intended by Sections 2521 to 2554 to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned; Provided, further, that the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts:* Provided, further, that in case of sale where the evidence of transfer is shown only by the books of the corporation, the stamp shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamp shall be placed upon the certificates; and in cases of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person, or who makes any such sale, or who in pursuance of any such sale delivers any certificate or evidence of the sale

of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and, upon conviction, shall pay a fine of not exceeding one hundred ($100.00) dollars, or be imprisoned not more than thirty (30) days, or both."

(Italics supplied).

PARA. 3, SECTION 2525, CODE OF LAWS OF SOUTH CAROLINA, VOLUME, 2, PAGE 228, 1932.

CONTENTIONS OF APPELLANT AS TO THE CONSTRUCTION OF THE ACT.

The Federal Documentary Stamp Tax Act is in many respects similar to the South Carolina Act. See Schedule A-3 of Title VIII of the Revenue Act of 1926 as amended by Section 723 (a) of the Revenue Act of 1932 (Title 26, Paragraph 901, Subdivision 3 of Schedule A.).

A comparison of the Florida Act with the Act of South Carolina and with the Federal Act will show that the Florida Act is much broader in its scope than the other Acts. The South Carolina and Federal Acts except from the operation thereof the following transactions:

(1) Agreements evidencing a deposit of certificates of shares of stock as collateral security for money loaned thereon, which certificates are not actually sold and the delivery or transfer for such purpose of certificates so deposited and loans of stock and the return of the stock so loaned:

(2) *Deliveries or transfers to a broker of certificates of shares of stock for sale and deliveries or transfers of*

such certificates by a broker to a customer for whom and upon whose order he has purchased the same.

The Florida Act does not exempt any of the above mentioned transactions, or any memorandum made in connection therewith. Since the Florida Act was taken in a large measure from the South Carolina Act, and the South Carolina Act exempts from the operation thereof, deliveries or transfers of certificates of shares of stock to a broker for sale, and deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased the same, it is reasonable to assume that the Florida Legislature intended to tax the memorandum of deliveries of shares of stock made in Florida in connection with these transactions between a broker and his customer.

The appellant takes the position that the following documents involved in this suit are subject to the Florida Documentary Stamp Tax Act:

1. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to *purchase* certain stocks for him upon a stock exchange located outside of the State of Florida:

(a) The memorandum made by the employees of the Florida branch office of the broker, which shows that the stock has been *purchased* as requested. This memorandum is taxable under the Act as a *memorandum of sale*, whether or not the same is delivered to the Florida customer.

(b) If the stock is delivered in Florida by the Florida branch office of the broker, and a receipt is made and de-

livered in Florida therefor, the same is taxable as a *memorandum of delivery* of stock.

2. Documents which are made in Florida pursuant to the order of the Florida customer to the Florida branch office of the broker to *sell* certain stocks upon a stock exchange located outside of the State of Florida:

(a) The written order of the Florida customer to the Florida branch office of the broker to sell certain stocks, is taxable under the Act as a unilateral *agreement to sell.*

(b) If the stock which is ordered by the Florida customer to be *sold,* is delivered by him to the Florida branch office of the broker, and a receipt is taken therefor, this is taxable as a *memorandum of the delivery of the stock.*

(c) The memorandum made by the Florida branch office of the *sale* of the stock, pursuant to the order to sell given by the Florida customer to the Florida branch office of the broker, is taxable as a *memorandum of sale,* whether or not the memorandum, or a copy thereof, is delivered in Florida to the Florida customer.

3. In the case of a *purchase* by the broker of stock on the stock exchange in a State other than the State of Florida for a Florida customer, and in the case of a *sale* of stock on a stock exchange in a state other than the State of Florida, there is made in the books in the office of the Florida branch office, a memorandum of the sale, and if no other memorandum of the sale or of the delivery is made in Florida, then the entry in the books in the Florida office of the broker is taxable under the Act as a *memorandum of sale.*

The appellant only claims that a tax should be paid upon the instruments, documents or memoranda *actually*

made in Florida. While there may be several of these instruments, documents or memoranda made in Florida in connection with the same transaction, which are taxable under the Act, it is conceded by the appellant that as to a particular purchase or sale, not more than one of such instruments or documents relating thereto would be taxable.

DEFINITION OF TERMS INVOLVED.

We wish to call to the attention of the Court the difference between a stockbroker and an ordinary broker:

> "*Between Stockbroker and Ordinary Broker.* An ordinary broker is generally a mere negotiator, acting avowedly for another as principal and having neither the title to, nor possession of, the property bought or sold. *The functions of a stockbroker, however, are in a great majority of his transactions much broader. He makes the purchase in his own name, frequently paying all or a part of the purchase price, and is intrusted with the possession of the securities dealt in, receiving or delivering them without the name of his principal appearing in the transaction.*"
>
> (Italic supplied.)
>
> 9 C. J. 511.

In considering what construction should be placed upon the words "memoranda of sales" as used in the first line of paragraph (4) of Section One of the Act, it may be well to consider the definition of the word "sale", and the word "memorandum":

(a) *SALE*

> "SALE. 1. Act of selling; a contract whereby the absolute, or general, ownership of property

is transferred from one person to another for a price, or sum of money, or, loosely, for any consideration;"

Webster's New International Dictionary, page 1871.

"A 'sale' is a contract by which property is transferred from the seller to the buyer for a fixed price in money paid or agreed to be paid by the buyer. DeBary vs. Dunne, 172 Fed. 940." Words and Phrases, (2d) Volume 4, page 436.

"The distinction between an 'actual sale' and a mere 'executory agreement to sell' personal property is that in the former the thing which is the subject of the contract becomes the property of the buyer the moment the contract is concluded, and without regard to the fact whether the goods be actually delivered to the buyer, or remain in the possession of the seller; while in the latter the goods remain the property of the seller till the contract is executed. Idaho Implement Co. v. Lambach, 101 Pac. 951, 955, 956, 16 Idaho, 497."

Words and Phrases, (2d) Volume 4, page 443.

(b) *MEMORANDUM.*

"MEMORANDUM. An informal record of something which it is desired to remember, or to preserve for future use, esp. of the writer; a note to help or jog the memory.
(2) Law. A brief or informal note in writing of some transaction, or an outline of an intended instrument; an instrument drawn up in a brief and compendious form;"

Webster's New International Dictionary, page 1348.

"A memorandum is defined to be a note to help the memory. Barber v. Bennett, 4 Atl. 231, 236,

58 Vt. 476, 56 Am. Rep. 565; Hay v. Peterson, 45 Pac. 1073, 1080, 6 Wyo. 419, 34 L. R. A. 581; Seymour v. Cowing (N. Y.) 4 Abb. Dec. 200, 205; 40 N. Y. (1 Keyes) 532, 536."

Words and Phrases (1st ed.) Volume 5, Page 4472.

"MEMORANDUM OR NOTE OF AGREEMENT" DISTINGUISHED. There must be a difference between agreement and memorandum or note of agreement. And what must that be? I take it, the difference between completeness and incompleteness. Agreement is the contract complete; memorandum or note of agreement is the contract incomplete, imperfect, even, it may be, somewhat inaccurate, but which may aid us in getting at the complete contract. Durham v. Taylor, 29 Ga. 166, 176."

2 C. J. 981.

DISCUSSION OF AUTHORITIES SUPPORTING CONTENTIONS OF APPELLANT.

The words "*memorandum of such sale*" appear in the *proviso* of the quoted part of the Florida Act. It will be observed that the proviso undertakes to limit and to detail what shall be done in reference to "sales" of shares or certificates of stock, which *sales are made in Florida.* So the words "memorandum of sale" as used in the *proviso* have reference solely and only to sales of shares or certificates of stock, *which are actually made in Florida.* This *proviso* in the Act has no application to any memorandum of sale or memorandum of delivery of shares or certificates of stock, unless *the sale of the shares or certificates of stock was actually made in Florida.* If

the sale occurs elsewhere than in the State of Florida then the *proviso* does not apply.

It is apparent from the definitions of the word "sale" and the word "memorandum" together with the use of the phrase "memoranda of sales" in the first line of Paragraph (4) of Section 1 of the Act that all *memoranda made in Florida* of sales made outside of the State of Florida will be subject to the terms of the Act. The Legislature did not intend that a memorandum of sale as referred to in the Act should be a memorandum such as is required in the sale of personal property under the Statute of Frauds. The Act does not require the memorandum to be signed by either party nor is there any indication that the memorandum would necessarily constitute a contract between the parties. If the Legislature had intended that this memorandum should be signed by the parties, it would have been an easy matter for such requirement to have been included in the Act.

There are only three cases from the Supreme Court of Florida which deal with the Act under consideration.

The first case is: *STATE EX REL PACKARD v. COOK*, 108 Fla. 157, 146 So. 223. That was a suit by Packard to have the Court determine whether or not an assignment of wages for less than one hundred ($100) dollars is subject to the Documentary Stamp Tax Act. In discussing this matter the Court said:

> *"The tax is levied in terms and without any exceptions on the specified subjects. But the rate of the tax is according to the amount of debt or obligation evidenced by such subjects.* Notwithstanding the fact that the amount of a debt or obligation evidenced in special cases is less than

> $100 with respect to a particular instrument, no legislative intent to completely exempt the subject from taxation is demonstrated, because the legislative intent was clearly expressed to the effect that there should be levied, collected, and paid for *and in respect to the 'several' documents mentioned and described in schedule A (section 1) a tax* 'on' promissory notes, non-negotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation, as mentioned."
>
> (Italic supplied.)

The next Florida case is that of *ROBERT NELSON v. W. A. WATSON,* opinion filed November 28, 1933, and not yet reported. In this case the Court considered a document made in Florida which purported to be a furniture lease. The Court declared the document to be a mortgage which incorporated the certificate of indebtedness not otherwise shown in a separate instrument, and as such, to be subject to the tax under Paragraph 5 of Section 1 of the Act.

The next Florida case is that of *STATE EX REL. WILLIAM H. ROGERS, and LOUIS KURZ v. REX SWEAT,* 152 So. 432, wherein the Court decided that an assignment of mortgage, when the certificate of indebtedness is otherwise shown in a separate instrument, is not subject to the Documentary Stamp Tax.

The South Carolina Act has been passed upon by a Three-Judge Federal Court in the case of *GRANITEVILLE MFG. CO. v. QUERY,* 44 Fed. (2d) 64. While this case does not pass directly upon that section of the Act in which we are interested, it does deal at some length with the theory of the Documentary Stamp Tax. In that

case the Court held that promissory notes executed, by officers of the company, outside of the State and mailed to the payee bank, also outside of the State, were not subject to the Documentary Stamp Tax in the State where the corporation was domiciled, which was South Carolina. The Court also held that promissory notes executed by the corporation within South Carolina and mailed to a payee bank, outside of the State, were subject to the Documentary Stamp Tax. It was contended that since the notes could be recalled at any time by the maker before actual acceptance by the bank, and because the bank was under no obligation to accept them and might refuse to do so, that the notes were not *made, executed and delivered in South Carolina.* The Court, however, held:

> "But the tax in the present case is a tax upon the creation within the State of South Carolina of evidence of a debt. These notes were created, if not wholly, certainly partly, within the state of South Carolina. The object taxed, therefore, namely, the creation of the evidence, was within the state, and subject to the power of the state. *The tax is laid upon the documents themselves,* and required to be paid by the person who makes, signs, or issues them. The documents were within the state, made, signed, and issued there. None of these facts appears in any of the cases relied upon by the plaintiff. They give a legal, taxable situs in South Carolina." (Italic supplied) Text 69.

The Court in discussing the theory of the Documentary Stamp Tax said that the Act should receive a broad construction. The Court also said that the tax in question by the very terms of the Act is not a license tax but a Documentary Tax. The tax levied is a Documentary

Tax expressly so declared by the terms of the Act and is *levied directly upon the documents themselves.*

The above mentioned case was later before this Court and the opinion of the Court is reported in *283 U. S.* 376, 75 L. Ed. 1126. In the opinion, the Court said:

> "The tax as thus sustained is an excise tax, of a familiar sort, levied with respect to the *creation of instruments* within the state. So laid, the tax was not imposed upon property, *or upon the transfer of property situated beyond the* jurisdiction of the state."
> *"It is simply a tax levied in relation to an act done within the State in making an instrument."*
> (Italic supplied.)

The Lower Court in its opinion rendered in the case at bar on January 18th, A. D. 1934, said in part:

> "It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely completed outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel. Hatch vs. Reardon, 97 N. Y. S. 535. For a State to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312."

It has never been our contention nor do we now contend that the Florida Documentary Stamp Tax Act levies an

excise tax upon the actual purchase or sale of stock by the broker for the Florida customer *where the purchase or sale takes place in a State or country other than the State of Florida.* We agree with the Lower Court that such construction could not be sustained because to do so would have the effect of giving the statute an extra-territorial effect.

Our position is that the Florida statute is *only applicable to documents which are made in Florida.* For example: (1) When the broker *makes in Florida* a record or memorandum to the effect that he has purchased on the New York Stock Exchange, for the Florida customer, certain stocks, that memorandum is taxable as a memorandum of sale, because the *memorandum* is made in Florida; (2) When the broker delivers to the Florida customer the stock purchased in New York for him and the customer *signs a receipt in Florida* for the stock, this is taxable as a memorandum of delivery of stock because the *memorandum is made* in Florida; (3) When the Florida customer signs, either by using his signature or by the use of his account number, or has signed for him by the broker, an order to sell certain stock on the New York Stock Exchange, this order is taxable as a unilateral agreement to sell, because *the order is made in Florida.* See *GRANITEVILLE MFG. CO. VS QUERY, supra.* (4) When, in connection with the order to sell as in (3) above, the customer delivers to the broker certain stocks and the broker makes out and delivers to him in Florida a receipt therefor, the same is taxable as a memorandum of delivery of stocks, because the *memorandum of delivery is made in Florida;* (5) When the Florida branch office of the broker makes an entry in its books or makes a memorandum of the sale of stocks on the New York

Stock Exchange in New York, for the Florida customer, this is taxable as a memorandum of sale, because the *memorandum of sale is made in Florida.*

The Lower Court, in its opinion above referred to, said that to tax such memoranda of sales made without the State as passes in Florida between the broker and the customer, would be giving to the statute extra-territorial effect and the Court cited as authority the case of *HATCH VS REARDON, supra.* In that case the facts were briefly as follows:

A non-resident of New York sold certain shares of stock in a non-resident corporation, in the State of New York to a non-resident of New York, and the State of New York claimed that the Documentary Stamp Tax should be paid on the sale because it took place in that State. It was contended that the enforcement of the tax in this manner would give extra-territorial effect to the statute. This Court said that the tax was upon the *sale or contract as made in New York,* and the State had the right to tax the contract made there, and that this construction would not give to the statute extra-territorial effect. See *HATCH VS REARDON,* 204 U. S. 152, 51 L. Ed. 415. If the appellant in the present case contended that the sale of stock which takes place in New York is taxable in Florida, then the Reardon case would be applicable. But no such contention is made by the appellant, and we respectfully suggest that the cited case is not authority for the opinion of the Lower Court in the present case.

The Lower Court said in its opinion above referred to that the enforcement of the statute against the appellees by the appellant, would be taxing property beyond the jurisdiction of the State, and that this would amount to

the taking of the property of the appellees without due process of law. The Court cited the cases of *FRICK VS PENNSYLVANIA,* 268 U. S. 473, 69 L. Ed. 1058; *FIRST NATIONAL BANK VS. MAINE,* 284 U. S. 312, 76 L. Ed. 313. In both cases the statutes undertook to levy an excise tax upon the *transfer* of property upon the death of the owner thereof, when the property transferred was not in the State, and the State did not have jurisdiction thereof. In the present case *no attempt is made to tax any property whatever; the tax under our law is an excise tax upon documents made in Florida.* So we find that the cited cases are not applicable to the present case. The so-called "Insurance cases," such as *ALLGEYER VS STATE OF LOUISIANA,* 165 U. S. 578, 41 L. Ed. 832, and *ST. LOUIS COTTON COMPRESS CO. VS ARKANSAS,* 260 U. S. 346, 67 L. Ed. 297, cannot be considered as authority for the proposition that the taxation of the documents made in Florida as contended for by the appellant, would result in a violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. In the cited cases the tax was upon contracts insuring property located in the respective States. The tax was upon the *contracts,* which in both cases *were made and executed outside the State,* which sought to impose the tax. In the present case no effort is made to tax any contract made outside of Florida. The tax imposed in our case "is an excise tax of a familiar sort levied with respect to the creation of instruments within the State. So laid, the tax" is "not imposed upon property or upon the transfer of property situated beyond the jurisdiction of the State." *GRANITEVILLE MFG. CO. VS. QUERY,* 283 U. S. 376, 75 L. Ed. 1126.

The documents made in Florida that are subject to the tax are not required to be in any particular form nor are they necessarily contracts between the customer and the broker. For example, the memorandum made in Florida by the broker of a sale of stock which took place in some other State for the customer, which gives the information to the customer that the sale has been made and the price at which the sale was made, would be such a memorandum as would be taxable under the Act. It cannot be said that this would be taxing a transaction taking place in some State other than Florida for the sale has been *completed in some other State.* It is not essential to the completion of the sale that a memorandum thereof be made in Florida, and the same is true of the memorandum of delivery of stock which is made in Florida. The sale is completed without the execution of these *instruments.* Surely the State of Florida has a right to tax the making of documents or instruments in Florida, just as this Court said in the Reardon case, supra, that New York had the right to tax contracts made in that State.

We respectfully suggest that this Court may well follow its decision in the case of GRANITEVILLE MFG. CO v. QUERY, supra, and the opinion of the Three-Judge Court in the same case, supra, which declared that the South Carolina Act should receive a broad construction, and that in doing so, the contentions of the appellant as to the documents referred to herein as being subject to the provisions of the Act, will be sustained.

The appellees suggest that the Act violates Clause 3, Section 8 of Article I. of the Constitution of the United States and Section I of the Fourteenth Amendment to the Constitution of the United States and Section 12 of

the Declaration of Rights of the Constitution of the State of Florida.

We think the contention of the appellees that the Act violates the Commerce Clause of the Federal Constitution has been settled adversely to them by the cases of

WARE AND LELAND, v. MOBILE COUNTY, 209 U. S. 405, 52 L. Ed. 855;

GRANITEVILLE MFG. CO. v. QUERY, supra.

The contention of the appellees that the Act violates Section 1 of the Fourteenth Amendment of the Constitution of the United States and that it violates Section 12 of the Declaration of Rights of the Constitution of Florida has been settled adversely to them by the cases of:

GRANITEVILLE MFG. CO. v. QUERY, supra;
HATCH v. REARDON, supra.

All of which is respectfully submitted,

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Attorney General of Florida.

H. E. CARTER,
Assistant Attorney General.

ROBERT J. PLEUS,
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All of Tallahassee, Florida,
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APPENDIX "A"

FLORIDA DOCUMENTARY STAMP TAX

Act of 1931

CHAPTER 15787—(No. 69).

AN ACT Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons

or in registered form, on each $100 of the face value or fraction thereof, 10c, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10c: Provided, that where a certificate is issued without face value, the tax shall be 10c per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10c on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each

share: Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10c. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor, 10c: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10c for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10c each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10c.

Section 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion

make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the taxpayer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

Section 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collect-

ing stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

Section 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession

any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or wilfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

Section 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

Section 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

Section 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Approved July 28, 1931.

APPENDIX "B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA. IN EQUITY.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, SELDEN F. WHITE, HENRY HOLT, WILLIAM L. MEFFERT, ALFRED S. ROGERS, TIMOTHY P. BROSNAN, HAROLD N. SCOTT, JOHN W. JORDAN, GEORGE H. ROSS, JAMES A. KIERNAN, HENRY T. HERMES, and BENJAMIN E. BILLINGS, Co-partners, trading and doing business under the firm name and style of THOMSON & McKINNON, and ALPHEUS C. BEANE, CHARLES E. FENNER, JOSEPH N. CARPENTER, R. BROWDER FLINN, EARL H. HULSEY, JOHN McCORKLE, ROB'T A. McCORD, JOHN L. JULIAN, SULLY C. PECOT, ALFRED S. WYLLIE, JAMES P. BUTLER, LESLIE L. VIVIAN, HUGH W. LONG, HERBERT R. HASTINGS, E. WRIGHT NOBLE, CURTIS B. DALL, VICTOR B. COOK, NORMAN WEIDEN, LOUIS W. LAUDICK, and HOYLE JONES, Co-partners trading and doing business under the firm name and style of FENNER, BEANE & UNGERLEIDER,

Plaintiffs,

vs.

J. M. LEE, as Comptrolled of the State of Florida,

Defendant.

In Equity. Suit by John P. Bickell and others against J. M. Lee, as Comptroller of the State of Florida. On

defendant's motion to dismiss the bill of complaint as amended and plaintiff's motion for an interlocutory injunction.

SHUTTS & BOWEN, of Miami, Fla., for Plaintiffs.

CARY D. LANDIS, Attorney General,

ROBERT J. PLEUS and

J. V. KEEN, Assistants Attorney General, of Tallahassee, Florida, for Defendant.

Before BRYAN, Circuit Judge, and SHEPPARD and AKERMAN, District Judges.

SHEPPARD, District Judge.

The plaintiffs, who comprise two co-partnerships and who are engaged in the business of stock brokers, seek injunctive relief against the Comptroller of the State of Florida by a bill to restrain the enforcement of the Stamp Tax Act (Chapter 15,787, Laws of Florida, 1931), on the ground that the same violates the Constitution of The United States (Article I, Section 8, Clause 3) by laying an undue burden on interstate commerce, and that such enforcement of the Act deprives plaintiffs of their property without due process of law (Article 14, Section 1).

The Act assailed levies a tax of 10c per $100.00, inter alia, upon

> "all sales, agreements to sell, or memoranda of sales or deliveries of, transfers or legal title to shares, or certificates of stock * * * * * whether made upon or shown by the books of the corpora-

> tion, or by any assignment in blank, or by any delivery, or by any paper or agreement of memorandum or other evidence of transfer or sale * * * * *". Also, "promissory notes, non-negotiable notes, written obligations to pay money, * * * * * made, executed, delivered, sold, transferred or assigned in the State of Florida * * *".

While the plaintiffs are not citizens of Florida, they maintain branch offices in the State through which they act as agents for their Florida customers in the capacity of commission brokers by making purchases and sales of stock on the New York Stock Exchange and on other Exchanges outside of the State of Florida. The practice and procedure followed by the two firms in representing their customers on the Stock Exchanges is set out in extenso in the Bill of Complaint, and is that substantially followed by all stock brokers. It is sufficiently disclosed by the bill that all purchases and sales of stock and the actual delivery is made in the State of New York, or other state in which the Exchange is located, between the floor members or brokerage firms who take part in such transactions similtaneously with full payment for the stock. The brokerage firm, acting as agent for its Florida customers, completes the transaction outside of the State of Florida. Prior to the completion of the transaction the only written documents passing between the brokerage firm and the customer in Florida are the written requests of the customer that the firm purchase or sell for his account, and copies of telegraphic communications from the New York Office of the broker advising the customer that such requests have been complied with.

Defendant's motion to dismiss is upon general grounds, that the bill is without equity, plaintiffs having their remedy at law, that it is not alleged that each of the plaintiff brokerage firms will be damaged in an amount in excess of $3000.00; that there is a misjoinder of causes of action and of parties plaintiff. After argument counsel for plaintiffs were allowed to amend so as to sufficiently allege damages to each party in the jurisdictional amount.

The jurisdictional amount for each party plaintiff, and diversity of citizenship being properly averred, all questions of jurisdiction may be disposed of by our holding that plaintiffs' remedy at law is not plain, adequate and complete. It is alleged in the bill that the payment of each tax under the Act is a separate transaction and consequently the recovery of such payments at law would require a multiplicity of suits and this alone, we conclude, is sufficient to give a court of equity jurisdiction.

There is no merit in defendant's contention that there is a misjoiner of parties plaintiff or of causes of action. The joinder is clearly within the scope of Federal Equity Rule 26 which allows a joinder where sufficient grounds appear for uniting the causes of action in order to promote the convenient administration of justice. That this ground for joinder applies to parties plaintiff as well as defendants is, it appears, well settled; see, International Organization, etc., vs. Red Jacket C. C., etc., 18 F. (2d) 839; and Shamrock Mfg. Co. vs. Radio Corp., 37 F. (2d) 675.

It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely com-

pleted outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel Hatch vs. Reardon, 97 N. Y. S. 535. For a state to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312.

However, where a sale is made of stock of a Florida corporation and a transfer made upon the books of the corporation in Florida, the State may properly tax the transfer as one made within the State. See People ex rel Hatch vs. Reardon, Supra.

Although the point was not argued by counsel nor directly presented in the bill, the allegations of the bill disclose a transaction with reference to the marginal accounts of Florida customers with the brokers' agents in Florida. In view of this showing by the bill, even though not put in issue, we deem it advisable, as a cautionary suggestion, to decide once for all that such transactions are subject to the tax. The agreement which the customer is required to sign upon opening a marginal account is attached to the bill as an exhibit. It provides that any and all securities, commodities and other property held by the broker for the account of the customer shall constitute collateral security for any and all of the obligations of the customer to the broker. Upon the execution of such an agreement and the deposit of security the broker advances a portion of the purchase price of the stocks which the customer wishes to buy on margin.

This is clearly a loan of money or credit by the broker to the customer and is a transaction collateral to the purchase or sale of stock. The transaction takes place entirely in Florida and is similar to the execution of a collateral note to secure a loan from a bank. This collateral agreement may be subject to the tax in accordance with the amount of money loaned thereunder as it is a written obligation to pay money which is made, executed and delivered in the State of Florida.

Interlocutory injuction will issue in conformity with the views here expressed.

APPENDIX "C"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA. IN EQUITY: NO: T-14

JOHN P. BICKELL, et al, Co-partners trading and doing business under the firm name and style of THOMPSON & McKINNON, and ALPHEUS C. BEANE, et al, co-partners trading and doing business under the firm name and style of FENNER, BEANE & UNGERLEIDER,

Plaintiffs,

vs.

J. M. LEE, as Comptroller of the State of Florida,

Defendant.

Final Decree Granting Permanent Injunction

This cause coming on for final hearing before this Court composed of the undersigned three Judges, con-

voked pursuant to Section 266 of the Judicial Code, due and proper notice having been given of the time and place of such hearing; and a stipulation of the facts and evidence having been filed herein, and counsel for the respective parties having been heard, it is, therefore, found and decreed by this Court as follows:

1. The facts and matters set forth in the said stipulation of facts are adopted as the facts of this case and in our opinion sustain the material allegations of the bill of complaint as amended.

2. The facts as found in the opinion of this Court previously filed and adopted, and which was rendered in connection with the granting of the interlocutory injunction herein, are hereby adopted as the findings of this Court on final hearing.

3. The conclusions of law as contained and set forth in the aforesaid opinion are hereby made the conclusions of law of this Court upon final hearing, except as to the marginal cutomers agreements being a written obligation to pay money and taxable under the Act in question. This exception is made because it appears from the stipulation of facts, and is conceded by counsel for defendant, that no tax is due thereon under said Act.

It is, therefore, ordered, adjudged and decreed that the interlocutory injunction heretofore granted herein, be, and the same is, hereby made permanent, and that the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by,

through or under his direction or administration, be and they are hereby permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be

enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

DONE AND ORDERED at Pensacola, Florida, this 10th day of March, A. D. 1934.

N. P. BRYAN,
U. S. Circuit Judge.

ALEXANDER AKERMAN,
U. S. District Judge.

Wm. B. SHEPPARD,
U. S. District Judge.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1935

No. 944

J. M. LEE, as Comptroller of the State of Florida,
Appellant,

against

JOHN P. BICKELL, GEORGE B. BUCHANAN,
ALFRED W. MANSFIELD, ET AL.,
Appellees.

BRIEF FOR APPELLEES

FRANK B. SHUTTS,
CRATE D. BOWEN,
CHARLES A. CARROLL,
All of Miami, Florida,
Counsel for Appellees.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1933
No. 944

J. M. LEE, as Comptroller of the State of Florida,
Appellant,

v.

JOHN P. BICKELL, GEORGE B. BUCHANAN,
ALFRED W. MANSFIELD, ET AL,
Appellees.

On Appeal from the District Court of the United States, in and for the Northern District of Florida.

BRIEF FOR APPELLEES

Preliminary Statement

This case was advanced on motion of the Appellant under 28 USCA § 768, and counsel received ten days' advance notice of the assignment of the case for argument May 9, 1934. As this brief is being drafted, less than one week before date of argument, we have not received a copy of the brief which will be filed on behalf of the Appellant. That fact is mentioned in order that the Court may know the circumstances under which this brief was prepared, and thus make due allowance for the form in which the questions are treated, which necessarily is somewhat different from that which would be employed in answering the Appellant's brief.

Citation of Report of Opinion of the District Court

In 5 F. Supp. 720 (Advance Opinions, Vol. 5—No. 12, of March 26, 1934) there is reported the opinion rendered by the District Court in connection with the granting of the interlocutory injunction herein.

Statement of the Case

On December 11, 1933, the Appellees as plaintiffs, non-residents of Florida, constituting the members of the brokerage firms of Thomson & McKinnon and Fenner, Beane & Ungerleider (now Fenner & Beane), filed their bill in equity against J. M. Lee, as Comptroller of the State of Florida, in the District Court of the United States, in and for the Northern District of Florida, and thereby sought to restrain certain threatened enforcement and operation of the Florida Documentary Stamp Tax Act, Chapter 15,787, Laws of Florida 1931, Ex. Sess., by restraining the Comptroller in such enforcement of the Act, on the ground, among others, that same violated certain specified provisions of the Constitution of the United States. (R. 5-38.)

On presentation of the bill to the late Honorable Wm. B. Sheppard, Judge of the District Court, an order was made December 11, 1933, granting a temporary restraining order to be effective until the hearing and determination of the interlocutory injunction prayed for, directing the defendant to show cause why an interlocutory injunction should not issue, and calling to his assistance to constitute a three-Judge Court under Section 266 of the Judicial Code, the Honorable Nathan P. Bryan, Judge of the United States Circuit Court of Appeals for the Fifth Circuit, and the Honorable Alexander Akerman, Judge of the District Court of the United States, in and for the Southern District of Florida. (R. 1-3.)

After due notice to the defendant and to the Governor and the Attorney General of Florida (R. 4-5), the plaintiffs pressed their application for interlocutory injunction and submitted and argued the same before the three-Judge Court on December 21, 1933, at Pensacola, Florida, following which the Court's above mentioned opinion was made and the interlocutory injunction granted. (R. 53-54.) Thereafter the cause was heard by said Court in Pensacola on March 10, 1934, on a final hearing at which the cause was presented and argued on the Stipulation of Facts (R. 59-91). On that day the Court made its final decree in the case granting

the permanent injunction as prayed for in the bill, in which it adopted as facts of the case those set forth in the Stipulation and those found in its previous opinion, and adopted as its conclusions of law those set forth in said previous opinion, excepting the language of the previous opinion in which the Court had taken the view that the Act applied to a certain marginal customer's agreement, as to which the previous opinion was not followed in the final decree.

Therefore, for the facts of this case, notwithstanding such statement thereof as may be contained in a Statement of the Case in the brief for Appellant, we respectfully refer the Court to the facts as stated in the District Court's opinion and in the Stipulation of Facts.

BRIEF OF ARGUMENT.

POINT ONE—The case is one of which the Federal Court had jurisdiction, and is within Section 266 of the Judicial Code.

Schlosser v. Welsh, 5 F. Supp. 993.

City of Hutchinson v. Beckham, 118 F. 399 (C. C. A. 8th).

Jewel Tea Co. v. Lee's Summit, Mo., 198 F. 532 (D. C., Mo.).

Grandin Farmers' Co-op. Elevator Co. v. Langer, 5 F. Supp. 425. (D. C., N. Dak.)

Fisher v. Brucker, 41 F. (2d) 774 (D. C., Mich.)

Louisville & Nashville Railroad Co. v. Garrett, 231 U. S. 298.

Graniteville Mfg. Co. v. Query, 283 U. S. 376.

McCormick & Co. v. Brown, 52 F. (2d) 934 (C. C. A. 4th).

POINT TWO—The case is within the equity jurisdiction of the Court.

Dows v. Chicago, 11 Wall. 108.

Union Pacific Ry. Co. v. Cheyenne, 113 U. S. 516.

Ogden v. Armstrong, 168 U. S. 224.

Ex parte Young, 209 U. S. 123.

Greene v. Louisville & I. R. Co., 244 U. S. 499.

Henrietta Mills v. Rutherford County, 281 U. S. 121.

City of Hutchinson v. Beckham, 118 F. 399 (C. C. A. 8th).

POINT THREE—The Florida statute with respect to stamp taxes on transfers of stocks is not subject to the construction placed thereon by the Florida Comptroller.

State ex rel. Packard v. Cook, (Fla.), 146 Sou. Rep. 223.

Nelson v. Watson (not yet reported).

State ex rel. Rogers v. Sweat, (Fla.), 152 Sou. Rep. 432.

Schwab v. Doyle, 258 U. S. 529.

Bowers v. New York & A. Lighterage Co., 273 U. S. 346.

Brewster v. Gage, 280 U. S. 327.
Graniteville Mfg. Co. v. Query, 283 U. S. 376.
People ex rel. Hatch v. Reardon, 204 U. S. 152 (and 184 N. Y. 431, 77 N. E. Rep. 970).

POINT FOUR—The Florida Act, if construed as contended for by the Appellant, is violative of the Constitution of the United States.

1. The taxation would deprive Appellees of property without due process of law.
   In re. Paul's Estate, 165 N. Y. S. (Surr.) 413.
   People ex rel. Hatch v. Reardon, 204 U. S. 152.
   Graniteville Mfg. Co. v. Query, 283 U. S. 376.
   Frick v. Pennsylvania, 268 U. S. 486.
   First National Bank v. Maine, 284 U. S. 312.
2. The taxation would deprive Appellees of liberty without due process of law.
   Allgeyer v. Louisiana, 165 U. S. 578.
   St. Louis Cotton Compress Co. v. Arkansas, 260 U. S. 346.
3. The taxation would constitute a burden on interstate commerce.
   Western Union Teleg. Co. v. Foster, 247 U. S. 105.
   Ware & Leland v. Mobile County, 209 U. S. 405.
4. The Act is void by reason of its excessive criminal penalties.
   Ex parte Young, 209 U. S. 123.

POINT FIVE—The Florida Act, if construed as contended for by the Appellant, is violative of the Constitution of the State of Florida.

1. The taxation would deprive Appellees of liberty and property without due process of law.
2. The Act is a denial of the State constitutional guaranty of equal rate of taxation.
   St. Louis Cotton Compress Co. v. Arkansas, 260 U. S. 346.
   People ex rel. Hatch v. Reardon, 184 N. Y. 431, 77 N. E. Rep. 970 (and 97 N. Y. S. 535).
   Jordan v. Duval County, 68 Fla. 48, 66 Sou. Rep. 298.

Graham v. West Tampa, 71 Fla. 605, 71 Sou. Rep. 926.

Sparkman v. State, 71 Fla. 210, 71 Sou. Rep. 34.

Camp Phosphate Co. v. Allen, 77 Fla. 341, 81 Sou. Rep. 503.

Louisville & N. R. Co. v. Amos, 98 Fla. 350, 123 Sou. Rep. 745.

Walter C. Hardesty, Inc. v. Town of Holly Hill, 100 Fla. 1130, 131 Sou. Rep. 134.

3. The Act contains more than one subject and the subject of the Act is not expressed in the title.

Smith v. Chase, Sheriff, 91 Fla. 1044, 109 Sou. Rep. 94.

POINT ONE.

The case was one of which the Federal District Court had jurisdiction, and was a case in which the interlocutory injunction application and final hearing were required to be presented to the statutory three-judge court under Section 266 of the Federal Judical Code.

The statement of points upon which Appellant intends to rely (R. 100-103) does not refer directly to this point, but the Tenth, Eleventh and Twelfth Points are of a general nature, to the effect that the Court erred in granting the permanent injunction, and in not dismissing the bill, and in granting the final decree, under which the questions raised by this point may be argued by Appellant.

As shown by Paragraph 2 of the bill (R. 8) the basis of Federal jurisdiction there alleged was that the cause is one of a civil nature in equity, wherein the amount in controversy, exclusive of interest and costs, exceeds the sum and value of $3,000.00, and which arises under the Constitution of the United States, and in which there is diversity of citizenship.

The diversity of citizenship is disclosed by Paragraph 1 of the bill (R. 6-8). This is supported by Paragraph 2 of the Stipulation of Facts (R. 60), to the effect that all of the plaintiffs are citizens and residents of states and countries other than the State of Florida, and by the defendant's admission in Paragraph 1 of his answer (R. 40), that he is a citizen of the State of Florida, and resides in the City of Tallahassee in said State (in the Northern Federal Judicial District of the State).

The provisions of the Constitution of the United States upon which the rights of the plaintiffs are predicated, are specifically alleged in Paragraph 16 of the bill (R. 21). That the constitutional or Federal questions raised are substantial is evident from the circumstances of the case, the allegations of the bill and the ruling and action of the District Court thereon.

It further appears from the bill that the object sought to be accomplished by the suit was that the freedom and liberty of the plaintiffs to conduct their said businesses should remain unhampered and unmolested by the allegedly unconstitutional taxation. By thus seeking redress from deprivation, under color of the State statute, of their rights, privileges and immunities secured to them in such respect by the Constitution of the United States, they presented a cause of which the Federal District Court had jurisdiction, irrespective of the amount in controversy. (28 USCA, § 41, Subdivision 14.)

An instance of a recent application of the ground of jurisdiction last mentioned, which was made by a three-Judge Court convoked in South Dakota, is *Schlosser v. Welsh*, 5 F. Supp. 993, 996 (Advance Opinions, Vol. 5—No. 15, of April 16, 1934).

The requisite amount in controversy, however, affirmatively appears. In addition to the formal allegation thereof, as contained in said Paragraph 2 of the bill, it was shown by Paragraphs 19, 20, 21 and 22 of the bill (R. 23-24) that the suit was one in which the plaintiffs were seeking to save their Florida businesses from extinguishment, and that the existence of such businesses and the value thereof to the plaintiffs were at stake, and that such value was greatly in excess of the jurisdictional amount. Relying on these features as constituting and determining the amount in controversy, the bill made no allegations with respect to the amount of the taxes involved in the case. With leave of the Court, an amendment to the bill was filed (R. 51-52), by which it was alleged that more than $3,000.00 in amount of taxes was involved as to each of the plaintiff partnership firms, and that the value of the business and property which the original bill alleged would be lost through the enforcement of the Act would amount to more than $3,000.00 as to each of the plaintiffs.

If the taxes which are sought to be collected, and the collection of which is prevented by the injunction, constitute the amount in controversy, then by such amendment it is

shown that the requisite jurisdictional amount is present. In addition to that, however, there is the value of the businesses of the plaintiff firms and the injury which they would sustain through the enforcement of the tax, likewise alleged in a sufficient amount, which is the true value or amount in controversy in a case of this kind.

City of Hutchinson v. Beckham, 118 F. 399 (C. C. A. 8th).

Jewel Tea Co. v. Lee's Summit, Mo., 198 F. 532 (D. C., Mo.)

Grandin Farmers' Co-op. Elevator Co. v. Langer, 5 F. Supp. 425 (D. C., N. Dak.)

In *Grandin Farmers' Co-op. Elevator Co. v. Langer, supra*, an interlocutory injunction was granted by a three-Judge Court convoked under Section 266 of the Federal Judicial Code, on application of a number of owners and operators of grain elevators, restraining officers of the State of North Dakota from enforcing a statute of that State affecting their business, and which was claimed to be in violation of the Federal Constitution. It was there contended by the defendants that the sufficient jurisdictional amount was not made to appear. The Court, however, took the view that the object of the suit was to protect the business which would be affected by enforcing the statute in the manner complained of, and bottomed its opinion on that point upon numerous decisions of this Court, as shown in the following quoted language, appearing on Page 426:

"The bill asserts that the action involves more than $3,000 exclusive of interest and costs. It is obvious that what the complainants seek to protect is the right to operate their elevators and to conduct their business free of the restrictions complained of. The value of that right is the amount in controversy.

" 'Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant. This right is alleged to be of a value in excess of the jurisdictional amount, and at the hearing no question seems to have been made but

that it has such value. The relief sought is the protection of that right, now and in the future, and the value of that protection is determinative of the jurisdiction.' Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U. S. 121, 126, 36 S. Ct. 30, 32, 60 L. Ed. 174. See, also, Scott v. Donald, 165 U. S. 107, 115, 17 S. Ct. 262, 41 L. Ed. 648; McNeill v. Southern Railway Co., 202 U. S. 543, 558, 26 S. Ct. 722, 50 L. Ed. 1142; Hunt v. N. Y. Cotton Exchange, 205 U. S. 322, 336, 27 S. Ct. 529, 51 L. Ed. 821; Bitterman v. Louisville & Nashville R. R., 207 U. S. 205, 225, 28 S. Ct. 91, 52 L. Ed. 171, 12 Ann. Cas. 693; Berryman v. Board of Trustees of Whitman College, 222 U. S. 334, 345, 32 S. Ct. 147, 56 L. Ed. 225."

By the Stipulation of Facts (R. 60-61) it is established that the taxes involved in this case amount to more than $3,000.00 as to each of the plaintiff partnership firms and also that the value of the business of each firm which by Paragraphs 19, 20, 21 and 22 of the original bill, it is alleged will be lost through enforcement of the Act in the respects complained of, is in excess of the jurisdictional amount. Furthermore, by Paragraph 5 of the Stipulation (R. 61) it is stated to be the testimony of the plaintiffs in this case that the enforcement of the Act, as threatened, will result in injury in excess of the jurisdictional amount to each of the plaintiff firms, and by a preliminary paragraph in the Stipulation (R. 59) it is agreed that the matter in the Stipulation set forth as the "testimony" of a party shall constitute evidence in the case. There is no stipulated fact or other evidence to contradict or detract from the "testimony" just mentioned. It appears, therefore, that the required amount in controversy is affirmatively shown by the bill as amended, and proved beyond question by the Stipulation of Facts.

The case is one which, under Section 266 of the Judicial Code, required the application for an interlocutory injunction and final hearing to be heard by a three-judge statutory Court, as therein provided for. The object of the suit was to restrain the action of a State officer, to-wit: the defendant Comptroller of the State of Florida, in the enforcement of

a State taxation statute (Chapter 15787, Laws of Florida, 1931, Ex. Sess.) on the ground, among others, of its unconstitutionality under the United States Constitution.

The nature of the contention of unconstitutionality as made in the bill was that the statute, properly construed, did not impose a tax on the papers and documents as to which it was sought to be enforced, and that if construed as imposing such tax, the statute abridged Federal constitutional privileges and immunities of the plaintiffs. The ground of unconstitutionality of a State statute was presented in the identical manner in the case of *Fisher v. Brucker*, 41 F. (2d) 774, in a suit to restrain enforcement of a Michigan inheritance tax upon a certain subject of taxation. There a statutory court under Section 266 of the Judicial Code expressly found that the case was one within the Federal statute and granted the relief sought. While the Fisher case was not appealed to the Supreme Court, it was through inadvertence appealed to the Circuit Court of Appeals, out of which Court it was dismissed (49 F. (2d) 759) upon that Court viewing the case as one properly within Section 266, and, therefore, appealable to the Supreme Court.

It is significant that in the Fisher case the basis upon which the injunction was granted was that the statute properly construed did not impose a tax on the subject in question, and, therefore, that the constitutionality question was not inquired into. The Court discussed that feature of the case and followed the decision of this Court to such effect in *Louisville & Nashville Railroad Co. v. Garrett*, 231 U. S. 298, 303, 304, where this Court held that in a case before a three-judge Court under Section 266 of the Judicial Code, the Court had jurisdiction to determine local questions as well as the Federal constitutional question.

Also, in *Graniteville Mfg. Co. v. Query*, 283 U. S. 376, this Court affirmed a decree of such a statutory three-judge Court in part granting an injunction restraining enforcement of a stamp tax statute of the State of South Carolina on certain promissory notes made outside that State. An examination of the opinion in that case rendered by the District Court (44 F. (2d) 64) discloses that there, as in this case, the

contention was that the notes were not within the taxing statute, but that if the Act were construed to tax them, it was then rendered unconstitutional.

The applicability of Section 266 of the Judicial Code to this case is further shown by the fact that under the Florida statute the State Comptroller is set up as the administrator of the Act, and is, therefore, the equivalent of an administrative board under the statute, whose orders as complained of herein were sought to be enjoined. In *McCormick & Co. v. Brown*, 52 F. (2d) 934, the Circuit Court of Appeals of the Fourth Circuit, in deciding that a single District Judge was without jurisdiction to entertain a cause on application for injunction by reason of the applicability and requirements of Section 266 of the Judicial Code, held that a single individual charged with the administration of a statute, was the equivalent of an administrative board or commission, within the meaning of Section 266, saying (at page 937):

> "And it is settled that a court of three judges is required not only when the constitutionality of the state statute is involved, but also when the constitutionality of an order of a state administrative board or commission, purporting to be authorized by state statute, is drawn into question. *A single individual, such as the prohibition commissioner of the State of West Virginia, may constitute a state administrative board or commission within the meaning of the act.*"

POINT TWO.

The case presented by the bill was one within the equity jurisdiction of the Court.

In the Statement of the Points upon which the Appellant will rely (R. 100), the first point assigned is that the District Court failed to find that the plaintiffs had a complete and adequate remedy at law for redress against enforcement of the Act complained of. We anticipate that Appellant's contention there will be that because an action may lie to recover a tax illegally imposed and collected, there was no equity on which the relief sought in this suit could be granted.

While mindful of the many authorities which state the general rule to be that a Court of equity will not restrain collection of taxes on the ground of their illegality or unconstitutionality, and recognizing the policy upon which such rule is founded, nevertheless, we contend it is equally clear and well settled that where such equitable relief is sought, under circumstances which bring the case under a recognized head of equity jurisdiction, as where the threatened injury would result in a multiplicity of suits, or otherwise would cause irreparable damage and injury, equitable relief will be granted. The basis of the suit and the ground of its equity in such a case is not the illegality or unconstitutionality of the tax, but the basis of the suit is the effect of the taxation, which through the multiplicity of suits and the irreparable injury gives rise to the cause of action upon which the relief is sought.

Dows v. Chicago, 11 Wall. 108.
Union Pacific Ry. Co. v. Cheyenne, 113 U. S. 516.
Ogden v. Armstrong, 168 U. S. 224.
Ex parte Young, 209 U. S. 123.
Greene v. Louisville & I. R. Co., 244 U. S. 499.
Henrietta Mills v. Rutherford County, 281 U. S. 121.
City of Hutchinson v. Beckham, 118 F. 399 (C. C. A. 8).

The showing made here was that under the Comptroller's construction, the nature of the tax complained of was such that it would require a tax payment in the form of the affix-

ation and cancellation of documentary stamps on some papers connected with each purchase or sale of stock made on a foreign stock exchange, where the purchase or sale originated in a Florida branch office of the brokerage firms; that hundreds of such transactions are handled daily by each of the firms; that the threatened imposition of the tax would cause serious impairment if not complete destruction of the Florida business; that the penalty for each violation would be a fine not to exceed $200.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the Court; and that each transaction would constitute a separate violation.

Under those circumstances, it is evident that the enforcement of the Act would cause irreparable injury to the appellee brokers through a loss of business not in anywise measurable by the amount of the taxes themselves. An action to recover back certain of such taxes which had been paid, could in no sense be an adequate or full or complete remedy for the impairment and loss of business which meanwhile would occur, because of the deterring effect of the requirement to continue the payment of such taxes during the year or more which it might take to recover in such an action. Therefore, it is no help for the Comptroller to say (R. 74) that if an action at law were brought to recover back taxes paid, the taxes which should be collected by him during the pendency of such action would be held available for return depending upon the outcome of the case.

Furthermore, it is apparent that a multiplicity of suits would be required to recover taxes paid, in that before any action could be completed for recovery of taxes which had been paid prior to its commencement, more taxes would have been paid necessitating a further suit, and so on in an endless chain of litigation.

The Appellant may refer to the statement in paragraph 30 of the Stipuation (R. 75) to the effect that stamps may be purchased in quantities in advance of their use, as a circumstance for refuting the holding of the District Court (R. 56) that the payment of each tax under the Act is a separate transaction, as a result of which recovery of pay-

ments at law would require multiplicity of suits. That the purchase of stamps in advance of their use is not a payment of taxes under the Act is a proposition too obvious to require reenforcement by argument. Certainly, one who purchased such stamps and still retained them in his possession could not maintain an action to recover their price. The tax is paid when a stamp is affixed and cancelled on some document taxable under the Act, or claimed by the taxing officials to be taxable thereunder.

An additional ground of equity, resulting from the circumstances of the case, is that the penalties provided for the violations, of which there would be hundreds daily, would make it impossible for the appellee brokers to maintain their business in the Florida offices with any degree of efficiency, if at all, in that their employees would be subject to multiple arrests, prosecutions, fines and imprisonments. It is no answer to that to say (as the Comptroller in his answer and in the Stipulation of Facts (R. 75) has said) that enforcement of the Act would not be carried out in an unreasonable, arbitrary or oppressive manner, since the very duty imposed upon him by the statute to administer and enforce the same would, under any conscientious and proper discharge of his duties in that respect, compel an enforcement of the violations which could not fail to have the result indicated.

It is to be noted that here the Comptroller did not offer to waive payment of such taxes as would become payable, pending an action brought to recover back certain taxes as a test of the legality and constitutionality thereof. Therefore, if the appellee brokers had paid certain taxes and filed an action to recover them as having been illegally and unconstitutionally collected, they would have been faced with the dilemma of violating the law by failing to comply with the statute in the many daily transactions which would occur during the pendency of the action, with the result that if unsuccessful they or their employees would find themselves subject to an accumulation of penalties which, if enforced against them, could result in sentence of imprisonment for hundreds of years and for payment of fines ranging into hundreds of thousands of dollars, or they could pay, or re-

quire their customers to pay, the separate tax on all of the ensuing and subsequent transactions, which procedure would result in the loss of business for which the return of the particular tax money sued upon and even of that paid subsequently thereto, could in no measure compensate them or afford any full or complete redress. See *Ex parte Young*, *supra*, 209 U. S. 123.

POINT THREE.

The Florida statute with respect to stamp taxes on transfers of stocks is not subject to the construction placed thereon by the Florida Comptroller.

In the Appellant's statement of the points on which he intends to rely, the Second, Third, Fourth, Fifth, Sixth and Seventh Points (R. 100-101) are to the effect that the District Court erred in enjoining the Appellant from enforcing the tax statute as to particular papers or documents which in such points are described by reference to the Stipulation of Facts.

As we view the case, the controlling questions affect alike each of the papers or documents referred to in the Appellant's Points Two to Seven, inclusive, and they will, therefore, be dealt with together in this brief.

The statute in full is attached as an Appendix to this brief. Reference is now made thereto to show that by Section One it imposes an excise tax on certain acts and on certain documents, and by Schedule A of Section One the various subjects of the excise tax are set forth in separate paragraphs. In the first paragraph of Schedule A it is specified that the tax shall be upon certain documents, to-wit, bonds and like certificates of indebtedness which are issued in the State. In the second paragraph the excise tax is imposed on certificates of stock which are issued in the State. The third paragraph of Schedule A (and that is the one under which the tax contended for by the Comptroller here is presumed by him to be imposed) an excise tax is placed upon the sale and transfer of stocks. In the fourth paragraph the tax is extended to promissory notes, non-negotiable notes, written obligations to pay money and assignments of salaries, wages or other compensation, and as to those particular items, the tax is made to apply to such as are made, executed, sold, delivered, transferred or assigned in the State. Further paragraphs impose the tax on instruments transferring an interest in real estate, on certain corporation voting proxies, and on powers of attorney.

The third paragraph of Schedule A, relating to transfers of stocks, properly construed, imposes an excise tax on stock transfers, and its mention of "memoranda of sales or deliveries of***" can mean only that such memoranda in certain instances shall be the vehicle for the stamp, which is the tax imposed on the transfers to which the memoranda relate.

For instance, it is provided that where the evidence of transfer is shown only by the books of the corporation, the stamp shall be placed on the books, but corporation books as such are not made the subject of an excise tax under the Act. It is only when the book becomes an evidence and the only evidence of a stock transfer that the stamp must be placed on the book, thus taxing the transfer. Similarly, it is provided that where the change of ownership is by transfer of the certificate itself, the stamps shall be placed on the certificate. In the instance of a transfer of the certificate which is thus stamped, there might be any number of incidental memoranda or papers which would refer to the transfer, and yet no provision is made by the Act for a separate excise tax on them.

Finally, the Act provides that where the transfers are made in two particular manners ("in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank") the *seller* must deliver to the *buyer* a bill or memorandum of sale and the stamp shall be affixed to that bill or memorandum of sale. It is provided that such a bill or memorandum of sale (that is the one required in the two instances mentioned) shall contain certain information, to-wit: the date thereof, the name of the *seller*, the amount of the sale, and the matter or thing to which it refers. Thus it appears that the occasions on which a bill or memorandum of sale is to bear the stamp are those instances where, because the transfer is by a certificate assigned in blank, or is by a contract to sell, the lack of tangible evidence of the taxable transfer creates the necessity for requiring such transfer to be accomplished by an obvious and formal memorandum of sale which can best evidence those particular transfers, and, therefore, form the vehicle to carry the stamp, and thus enable the administrator of

the Act to more efficiently enforce the same. It is obvious that when a memorandum of sale is so stamped, the tax imposed is the excise tax on the transfer, the transfer being the taxable event.

The limit which necessity places on the length of this brief prevents us from outlining in detail the stock transfer transactions conducted by the appellee brokers on the New York Stock Exchange and the other Exchanges outside the State of Florida on which such transfers are made by them for their Florida customers. The facts relating thereto are set forth in detail in the Stipulation of Facts. The nature of the business generally is shown by paragraph 1 of the Stipulation (R. 59-60). The manner of handling such transactions on the New York Stock Exchange is shown by paragraph 6 of the Stipulation (R. 61) to be substantially similar to that employed by Appellees on other Stock Exchanges. The procedure for a purchase of stock on the New York Stock Exchange, for a Florida customer, is set forth in detail in paragraph 7 of the Stipulation (R. 62-65), and as to a sale of stock, in paragraph 8 thereof (R. 66-68).

We respectfully direct the Court's attention, however, to certain of the facts as contained in said Stipulation, namely, that all purchases and sales are made at the customer's risk and for his account by the brokers acting as the representative of the customer, and whether the broker is called "broker" or "agent" is immaterial since the detailed statement of the transactions shows that the representation is in fact one of agency, wherein in making a sale or purchase for the customer on the foreign exchange, the broker acts as agent for the customer who is his undisclosed principal, and there (outside the State of Florida) contracts for the sale or purchase of stock, and completes the transaction, dealing with another broker or brokerage firm, who in turn is acting as an agent for an undisclosed principal. All transactions are completed by payment and delivery, made outside the State of Florida. In the transactions in question, in the case of a purchase of stock for a Florida customer, no purchase thereof is made in the State of Florida. In the case of a sale of stock for a Florida customer, no contract for its sale is

made in the State of Florida, and no sale, or delivery to the purchaser thereof, is made in the State of Florida.

The Appellant will contend that the various incidental memoranda exchanged between the customer and the employees of the Florida branch offices of the appellee firms, which refer or relate to purchases or sales of stock made for them without the State, are taxable under the above specified portion of the statute, notwithstanding that the Appellant no doubt will concede that the extra-territorial *transfer* is not taxable under the Act. More specifically stated, the position of the Appellant in this case will be that regardless of the fact that the transfer of stock is one made outside the State, and, therefore, not within the reach of the excise tax Act, those written communications between the broker and customer, which are only incidental to the foreign transfer, should be construed to be memoranda of a sale, or memoranda of delivery, and as such, separate subjects of the excise tax.

The unsoundness of that position is demonstrated first, by the wording of the Act as pointed out above; secondly, by the concession which the Appellant has made in paragraph 17 of the Stipulation of Facts (R. 70) that not more than one of such papers or "memoranda" would be taxable, though a number of them might be utilized in connection with a foreign purchase or sale, for upon his conceding that point, it becomes apparent that it is the transfer that is the basis of the tax, and the Appellant thereby in effect concedes that the nature of the incidental papers is not the basis for a tax on them; thirdly, by the fact that no one of such incidental papers would be taxable, even under the Appellant's construction, unless the purchase or sale transaction to which it relates is actually consummated; fourthly, because the amount of the tax which the Comptroller would impose on such incidental papers would depend not upon what might be contained thereon, but upon the number and face value of the shares of stock sold or purchased outside the State; and finally, because such a construction of the statute, even if the view be taken that it is possible of that construction, would be forced and strained and an interpretation resolving

a patent ambiguity unaided by any indication that such was the objective intent of the Legislature.

The statute has been before the Supreme Court of Florida for construction in a limited number of cases.

State ex rel. Packard v. Cook, ...Fla.,....., 146 Sou. Rep. 223 (1933).

Nelson v. Watson (decided November 28, 1933, opinion not yet reported).

State ex rel. Rogers v. Sweat, ...Fla....., 152 Sou. Rep. 432 (1934).

These have not involved the paragraph relating to stock transfers. They leave no doubt, however, as to the principles which shall be applied in construing the Act, and they are clear that if the wording of the Act casts doubt upon the taxability of an instrument, that doubt must be resolved in favor of exemption, that a tax cannot be imposed thereunder in the absence of clear language for the purpose, and that the person upon whom it is sought to impose the burden of a tax shall be given the benefit of any doubt in that regard.

In *State ex rel. Packard v. Cook, supra*, 146 Sou. Rep. 223, the Court was concerned with an ambiguity as to the taxability of a written assignement of wages of less than $100.00 in amount, under the fourth paragraph of Schedule A taxing promissory notes, non-negotiable notes, written obligations to pay money, etc. The Florida Court, speaking through Mr. Chief Justice Davis, there said at Page 224:

> "At the outset, it must be conceded that the correct rule of construction to be applied in such controversies is that, if there is any doubt as to the liability of an instrument to taxation under the act, the construction is in favor of exemption, because a tax cannot be imposed without clear and express words for that purpose. United States v. Isham, 17 Wall. 496, 21 L. Ed. 728.

> "The well-established rule is that, where there is an ambiguity in the language of a statute imposing a tax, and that ambiguity raises a doubt as to the legislative intent, the persons upon whom it is sought to impose the burden are to be given the benefit of the doubt, because a tax, to be sustained in any given case, must come clearly within the letter of the statute. Edwards, Internal Revenue Collector, v. Wabash Ry. Co. (C. C. A.) 264 F. 610; 33 C. J. 285; 25 R. C. L. 1092. See, also, State v. Beardsley, 84 Fla. 109, 94 So. 660."

In the *Nelson v. Watson* case the Florida Court held a certain document taxable as being a written obligation to pay money under the fourth paragraph of Schedule A.

In the third case, *State ex rel. Rogers v. Sweat, supra,* the Court held that the Act did not tax assignments of mortgages when the certificate of indebtedness was otherwise shown in a separate instrument. There again the question concerned written obligations to pay money, taxed under the fourth paragraph of Schedule A. As to the recognized rule of construction applicable to this particular statute, however, the Court in an opinion by Mr. Justice Buford, at Page 433, said:

> "It is conceded that the well-established rule is that where there is an ambiguity in the language of a statute imposing a tax and that ambiguity raises a doubt as to the legislative intent, the persons upon whom it is sought to impose the burden are to be given the benefit of the doubt because a tax to be sustained in any given case must come clearly within the letter of the statute. See Edwards, Internal Revenue Collector, v. Wabash R. R. Co. (C. C. A.) 264 F. 610; 33 C. J. 285; 25 R. C. L. 1092; and State v. Beardsley, 84 Fla. 109, 94 Sou. 660. See, also, Nelson v. Watson (Fla.) —— So. ———, decided November 28, 1933."

The foregoing is in accord with the rule of construction as applied under such circumstances by this Court.

Schwab v. Doyle, 258 U. S. 529, 536.
Bowers v. New York & A. Lighterage Co., 273 U. S. 346, 350.

The case of *Schwab v. Doyle, supra*, involved a Federal estate tax. The Court, in referring to the construction urged by the defendant Collector of Internal Revenue, there said (258 U. S. at 536):

> "But granting the contention of the defendant has plausibility, it is to be remembered that we are dealing with a tax measure and whatever doubts exist must be resolved against it."

The particular incidental papers or "memoranda" as to which the enforcement of the Act is threatened, as specified in Appellant's Second to Seventh Points (R. 100-101) are as follows:

Exhibit 3 to the Stipulation of Facts (Appellant's Point Two) is shown on Page 78 of the Record. This is a telegraphic notice sent by the New York office of an appellee brokerage firm to its Florida branch office, showing the consummation of a purchase of stock on an order or request of a Florida customer. The nature and function of that notice is shown by the Stipulation, sub-paragraphs (f) and (g) of paragaph 7 (R. 63-64), to be a message sent by the Florida branch office over the firm's private wire, advising or confirming that the transaction was theretofore completed on the New York Stock Exchange, and it is shown that in some instances the written message is not given to the customer.

Exhibit 6 to the Stipulation of Facts (Appellant's Point Three) appears on Page 79 of the Record. This is shown by sub-paragraph (n) of paragraph 7 of the Stipulation (R. 65) to be a form of receipt which the New York office mails to the Florida customer with stock which they have purchased and are forwarding to him, and which the customer is requested to sign and return by mail to the New York office of the firm. Our position there is that such receipt has no direct connection with the purchase of stock

which was previously made for the customer outside the State, and that the broker receives delivery in New York as the agent for the customer, and in forwarding the same to the customer the broker, that is, the customer's agent, is merely performing messenger service.

Exhibit 7 to the Stipulation of Facts (Appellant's Point Four) appears on Page 80 of the Record. This is shown by sub-paragraph (b) of paragraph 8 of the Stipulation (R. 66) to be an order or request of a Florida customer to the appellee brokers to sell certain stock for him on the New York Stock Exchange. By reference to the full explanation of such an order as made in the case of a purchase (R. 62) it appears that it is nothing more than a delegation of authority to the brokers to sell the stock for the customer, if a sale is possible of execution on the terms specified, and is a direction which may or may not bring about a sale of the stock; that in the event a sale results therefrom the contract for the sale and the sale itself both take place outside the State of Florida at a time subsequent to the authorization, and that it is not essential that the order be written or in any particular form. An order made orally will serve the purpose.

Exhibit 9 to the Stipulation of Facts (Appellant's Point Five) is shown on Page 81 of the Record. This appears by sub-paragraph (f) of paragraph 8 of the Stipulation (R. 66-67) to be a telegraphic communication from the New York office of the brokers to the Florida branch office conveying the information that a requested sale of stock for a Florida customer has been made on the New York Stock Exchange. This paper, as in the case of Exhibit 3 discussed above, may or may not be delivered to the customer, who sometimes is notified orally or by telephone or not notified at all through the branch office. The Stipulation shows that formal notice of the transactions is always mailed from the New York office of the firm to the Florida customer on the day that the transactions take place. (R. 67).

Exhibit 12 to the Stipulation of Facts (Appellant's

Point Six) is shown on Page 82 of the Record. This is shown by paragraphs 9 and 10 of the Stipulation (R. 68-69) to be a form of the receipt which is given by a Florida branch office to a customer who deposits money or stocks with the appellee brokers through a branch office. It is the Appellant's contention that when such receipt is given for a deposit of stocks it is taxable under the Act as a "memorandum of delivery." We submit that the relation between the parties, as shown by the Stipulation of Facts, precludes any such construction, in that the manual delivery of the stocks by a principal to his agent to be dealt with by the agent for the principal is not a transfer of title thereto.

Exhibit 14 to the Stipulation of Facts (Appellant's Point Seven) appears on Page 84 of the Record, and is shown by paragraphs 12, 14 and 16 of the Stipulation (R. 69-70) to be an example of the record of trades of a Florida customer, which is kept in a Florida branch office. The Stipulation discloses that the purchases and sales indicated thereon are those which the firm has made on the customer's behalf outside the State of Florida; that the complete record of all transactions and debit and credit items, with balances computed daily, is kept in the New York offices of the firms, according to which all statements and remittances are made, whereas the corresponding Florida approximations are for the convenience of the branch office operatives and of the customer, to the extent that such records of the position and transactions of the customer may be relied on, subject to confirmation from the complete records as kept in the New York offices of the firms. It is obvious that these records of trades are notations made after the foreign transaction has been made by the broker for the customer, and do not purport to give the names of the parties to whom the customer's stock has been sold or from whom stock has been purchased for the customer, but are merely such notations with respect to transactions as the customer might jot down in a personal notebook for future reference.

The Appellant's contention here then will be that the

various papers above described are taxable as memoranda of sales of stock or as memoranda of deliveries of stock, but as above noted, they do not fit the description or fulfill the purpose of the memoranda of sales which, by the Florida Act, are required to bear an excise tax *as the tax on the transfer to which they relate.*

Statutes in other jurisdictions also impose a tax on memoranda of sales. In the Federal statute (Sub-division 3 of Schedule A of Section 800 of the Revenue Act of 1926 as amended by the Revenue Acts of 1928 and 1932, U. S. C., Title 26, §901) a tax is imposed on

> "* * * all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to any of the shares or certificates * * * whether made upon or shown by the books of the corporaton or other organization, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale * * *".

The meaning of "memoranda of sales" as used in the above quoted provision appears clearly from Article 36 of Regulations No. 71 issued by the Bureau of Internal Revenue. That reads as follows:

> "Memoranda of sales. — Every person who makes *an agreement to sell* or transfers title to shares of stock *by delivery of certificates assigned in blank,* including every person who lends stock, shall, as a part of such transaction, promptly make and deliver to the buyer or borrower a bill or memorandum of such sale, agreement to sell, or loan, duly signed by the seller or lender or his agent, to which the requisite stamps shall be affixed and canceled, which bill or memorandum shall show the date of the transaction, the names of the seller and buyer, or lender and borrower, and the name and number of shares of stock, and the tax paid thereon, and in the case of a transaction made on an exchange shall bear a number upon the face thereof

> and have printed or written in ink thereon the words 'Subject to the Revenue Act of 1926, as amended, and regulations made in accordance therewith.' No more than one such bill or memorandum made by the seller or lender on any given date shall bear the same number. However, no single transaction or purchase or sale that is made upon an exchange by one member to another member shall be required to be evidenced by more than one stamped memorandum."

As appears from the above provision of the Regulations the Federal authorities refer to a memorandum of sale as an instrument delivered by the seller to the buyer. Furthermore the instrument is described as a "bill or memorandum of sale," just as in the case of the Florida statute.

The Florida statute imposes a tax on "memoranda of sales or deliveries." The Comptroller's construction is that this language is the equivalent of memoranda of sales or memoranda of deliveries. In other words, the Comptroller contends that both memoranda of sales and memoranda of deliveries are taxable and he claims that a receipt for a stock certficate is a memorandum of its delivery which is subject to the tax. It is submitted that this is a strained and unjustified construction. As so construed the statute would impose a tax on a receipt for a stock certificate issued by a mere bailee or a messenger or any other person who was intended to have temporary custody of the certificate.

The Federal statute is in exactly the same language as the Florida statute in this particular, including the punctuation, the Federal statute imposing a tax on "memoranda of sales or deliveries." The Federal authorities do not attempt to tax a mere receipt for stock certificates under this provision. An examination of the regulations and decisions under the Federal statute make this abundantly plain.

There has for years been a statute in the State of New York in which almost the identical language is used. Sec-

tion 270 of the Tax Law of New York includes this language:

> "all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock * * * in any domestic or foreign association, company or corporation * * * whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final***."

In the *Opinions of the Attorney General of New York* for 1928 at page 125, a case was presented under the New York statute in which stock of a Canadian corporation owned and possessed by a person in New York had been sold to a Canadian purchaser on a Canadian exchange. The seller assigned the certificates in blank in New York for delivery to the purchaser in Canada. The certificates were then delivered to a broker in New York to complete the transaction. The Attorney General's opinion reads as follows:

> "The State Tax Commission asks my opinion as to whether stock transfer tax becomes owing when stock in a Canadian corporation, owned and possessed by a person within this State, is assigned by him in blank and delivered here to brokers for the purpose of delivery in Canada to a purchaser, pursuant to a sale previously executed upon a Canadian exchange.
>
> "In my opinion, Tax Law, section 270, does not impose a tax upon such a transaction.
>
> "It is true that the provisions of our statute taxing 'deliveries' and 'transfers' of stock are attended by some very broad phrases, and are not necessarily limited, as to any delivery or transfer which is a step to a gift or sale by International Paper Company v. State, 210 App. Div. 353, aff. 241 N. Y. 535 mem. Upon

> the present statement of facts, however, the sale having been effected in Canada previous to the delivery here, it seems that the brokers in this State perform no function other than might be performed by a messenger or common carrier, and the only true delivery is that in Canada. I am informed, and the fact is not without some slight persuasiveness, that until a few months ago it was generally assumed that there was no tax upon such transactions."

The facts of the New York case, covered by the Attorney General's opinion just quoted from, exactly fit the situation which occurs where a sale is made on the New York Stock Exchange for a Florida customer, who thereafter hands his stock to one of the appellee brokerage firms to use in making the delivery to the purchaser required to be made in New York. Just as the New York Act could not be used to levy an excise on such "delivery" of stock sent out of the State in connection with the sale made outside of the State, the "delivery" by sending stock from Florida to New York to be used in a sale delivery in that State, is not a taxable transaction under the Florida Statute. That rule and construction, applying as it does to shipments of stock to foreign States where sales have been made, following the making of such sales, would apply all the more clearly to a shipment of stock to a foreign Exchange for the purpose of having it offered for sale, and before any contract for sale or any sale had been made therefor.

It is submitted that the intent of the Florida statute is to tax only transfers, sales and agreements to sell which are made in Florida. This intent appears from the language of the statute which after imposing a tax of 10c on each $100.00 of face value of shares with par value, provides:

> "and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each share."

The above quoted language clearly indicates an intention to tax only a transfer, a sale or an agreement to sell. No other transaction is specified in the language imposing the tax with respect to shares without par value and it cannot be seriously contended that other tansactions were intended to be taxable with respect to shares with par value. The additional phrases used in the first part of the paragraph, that is, memoranda or sales or deliveries, were intended to be taxed only when constituting a necessary part of a transfer, or a sale or an agreement to sell.

It is clear also that when the bill or memorandum of sale as described in the Florida statute has been duly stamped, there is no further tax due. That this construction is placed on the Federal statute appears from Article 35 of Regulations No. 71 issued by the Bureau of Internal Revenue. That article reads in part as follows:

> "*Sales or transfers not subject to tax.* — the following are examples of transactions not subject to the tax:
>
> (a) The transfer of stock pursuant to a sale, where the previous memorandum of sale has been duly stamped."

The true memorandum of sale, where the appellee brokers sell stock for a Florida customer, is the one which is made and delivered in New York in connection with a sale of stock there. Exhibt 5 to the Stipulaton of Facts (R. 79) is an example of an actual memorandum of sale which is called the "sales ticket," to which there are affixed and cancelled, the stamps required by the New York and Federal excise taxes which are levied upon the stock transfer, in connection with the making of which such memorandum or "sales ticket" is delivered in New York by the selling broker. (R. 64 and 68).

The Florida statute was construed by the State officials for nearly two years as imposing no tax under the circumstances involved in the example under consideration in this

memorandum. This appears from letters and telegrams which passed between the former Comptroller, Honorable Ernest Amos, and Messrs. Shutts & Bowen, as attorneys for one of the appellee firms, shortly after the Act became effective. (R. 26-27 and 85-91).

The interpretation placed upon a statute over a considerable period of time by administrative officers charged with its enforcement, is entitled to great weight in determining the proper construction of the statute. In *Brewster v. Gage*, 280 U. S. 327, 336, in a question arising under the Federal Revenue Acts of 1918 and 1921, the Court said:

> "It is the settled rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty reasons. *Logan v. Davis*, 233 U. S. 613, 627. *Maryland Casualty Co. v. United States*, 251 U. S. 342, 349. *Swendig v. Washington Water Power Co.*, 265 U. S. 322, 331."

From the contentions made in the Court below by counsel for Appellant, we anticipate that they will argue here that the case of *Graniteville Mfg. Co. v. Query*, 283 U. S. 376 (affirming 44 F. (2d) 64), supports their attempt to construe the third paragraph of Schedule A of the Florida statute as requiring stamps on the papers and memoranda above mentioned made in the State of Florida which make incidental reference to a foreign sale of stock.

In the Graniteville case it was held that promissory notes made by a South Carolina corporation in that State and mailed to banks outside the State, to evidence loans to be made thereon, were taxable under paragraph 4 of Schedule A of a South Carolina excise tax statute which, like the corresponding paragraph in the Florida statute, places a tax on promissory notes and other written obligations to pay money. The Court held that the tax on promissory notes was an excise levied with respect to the creation of the instruments within the State.

Counsel for the Appellant in this case will argue that the incidental papers relating to foreign stock sales are papers made within the State, and that the application in the Graniteville case given to the statute as to taxing the promissory notes should be given to the Florida statute with reference to the Florida papers and memoranda which are incidental and collateral to the foreign stock sales. It is a complete answer to that argument to point out that while the *fourth paragraph* of the statute does levy an excise on the making in Florida of promissory notes and certain other obligations to pay money, the *third paragraph* of Schedule A provides an excise tax of an entirely different character, to-wit, an excise on the transfer of property; and to call attention to the fact that the tax sought to be imposed on these incidental and collateral memoranda is conceded not to apply to more than one subject which is connected with any foreign purchase or sale of stock, and that as sought to be imposed by the Comptroller the taxability is made to depend upon the fact of a foreign sale and the value and amount of the stock sold. Moreover, in the Graniteville case the Court distinguishes the tax as there placed on the making of promissory notes, from an excise tax on a property transfer such as a sale of stocks. This is shown by the Court's opinion, where, in specifying the nature of the excise tax applied to the making of promissory notes under the fourth paragraph of Schedule A of the Act, it was said at Page 379:

> "So laid, the tax was not imposed upon property, *or upon the transfer of property*, situated beyond the jurisdiction of the state * * *."

As the Graniteville case dealt with the nature of the tax as applied to promissory notes and obligations to pay money, specified in the *fourth* paragraph of Schedule A, the case did not purport to pass upon or designate the type or nature of tax imposed by the *third* paragraph of Schedule A, relating to stock sales and transfers. For the use to which the Appellant seeks to put that authority, the decision is inapplicable.

A stock transfer tax provision of the New York State law, which for purpose of construction is the same as the third paragraph of Schedule A of the Florida Act was directly under consideration in the case of *People ex rel. Hatch v. Reardon*, 204 U. S. 152, in which the New York Appellate Division and Court of Appeals and this Court held that the tax imposed by that portion of the statute was an excise tax on the sale and transfer of property. The question was directly raised by the argument there made to the effect that the tax was a property tax. In the opinion of the case in the New York Court of Appeals (184 N. Y. 431, 77 N. E. 970) the point was discussed as follows (p. 795 of N. E. Rep.):

> "The tax, however, is not on property, but on the sale of property, or on a particular kind of contract when made within this state. The certificate, itself, is not liable for the tax, but the person selling it is. The tax is not a lien on certificates, nor on shares, which may be owned to any extent throughout the state, free from any claim under the statute in question. *It is the sale alone that gives rise to the tax, which is imposed through the command of the law to the seller to pay the tax when the contract to sell is made, and it is enforced not by levy and sale, but by civil and penal remedies against the person of the seller.*"

We, therefore, respectfully submit that the third paragraph of Schedule A of the Florida statute simply creates an excise tax upon the sale and transfer of stock, and that, as the sales and purchases of stock which the appellee brokers make on the New York and other foreign Stock Exchanges for their Florida customers, are transfers of stock not made within the State, the taxable event does not occur within her territorial jurisdiction, and that the papers incidentally referring to such purchases and sales and which Appellant calls "memoranda" of sales and of deliveries, are not subject to taxation under the Act.

POINT FOUR.

The Florida Act, if construed as contended for by the Appellant, is violative of the Constitution of the United States.

The argument made under this heading is applicable to the stated points upon which the Appellant relies, which are numbered Two to Seven, inclusive, in that those points assign as error the restraining of the tax as to the various documents above discussed. The argument here made applies directly to Appellant's Eighth and Ninth Points (R. 102), which attack the District Court's ruling that the Comptroller's construction would give the statute extra-territorial effect, and also may apply under the last three points which Appellant relies on which attack the District Court's decision on broad and general grounds.

It is the contention of the Appellees that the result of construing the statute, as contended for by the Comptroller, would render it repugnant to the First Section of Article 14 of the Amendments to the Constitution of the United States as depriving the Appellees of their liberty and property without due process of law, and by denying to them within the jurisdiction of the State of Florida the equal protection of the laws, and repugnant to the commerce clause of the United States Constitution (Article I, Section 8, Clause 3).

1. The taxation would deprive Appellees of property without due process of law. It is clearly demonstrated by the agreed facts here that all purchases and sales of stocks made by the Appellee brokers for their Florida customers take place entirely outside of the State of Florida. All steps and elements essential to the transfers are foreign to the State.

Statutes such as the Florida Act in question have been construed to have no extra-territorial effect. A similar New York Act (Section 270 of the Tax Law of New York) was given that construction.

In re. Paul's Estate, 165 N. Y. S. (Surr.) 413, (affirmed without opinion by the Appellate Division, First Department, 167 N. Y. S. 1117);

People ex rel. Hatch v. Reardon, 204 U. S. 152, affirming the Court of Appeals, 77 N. E. 970, which affirmed the Appellate Division, 97 N. Y. S. 535.

Likewise, a similar statute of South Carolina was so construed in *Graniteville Mfg. Co. v. Query, supra*, 283 U. S. 376, where it was held that the statute could not apply to promissory notes which were made and delivered outside of that State.

The Federal statute levying an excise on sales and transfers of stocks (26 USCA § 901) has been construed by the general counsel of the Bureau of Internal Revenue not to apply to sales of stock made outside of the territorial jurisdiction of the United States. In the "*Internal Revenue News*," Vol. 5, No. 11, page 15, issued by the Bureau of Internal Revenue in the month of May, 1932, there appears an article by Frank D. Strader of the Office of the General Counsel of the Bureau. Mr. Strader refers to Article 34 of the Regulations 71 and says:

> "Under the above-cited regulations the bureau has ruled that the assignment in blank and delivery of certificates of stock in Canada, where such stock is issued by a domestic corporation, is not subject to the stamp tax liability imposed by section 800, Schedule A-3, Title VIII, revenue act of 1926. There is nothing in the law or regulations that imposes the tax on the mere sale of corporate stock when the transaction is effected wholly outside of the jurisdiction of the United States. However, where the sale occurs outside of the limits of this country, but the transfer of the stock is made upon the books of the corporation in the United States, the transfer is thus brought within the jurisdiction of the United States and becomes subject to tax."

This construction, placed on these earlier kindred acts, which were models for the later Florida statute, alone would

be sufficient to require a similar construction to be given to the Florida Act. But more compelling in its effect, and controlling on the point, is the underlying principle that a state is without power to levy a property tax on property which is not within its jurisdiction, or to levy an excise tax on a taxable event which occurs outside of its territorial limits.

In this connection the District Court in its opinion rendered in this case (R. 57) said:

> "It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely completed outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel. Hatch v. Reardon, 97 N. Y. S. 535. For a state to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312."

The cases cited by the District Court amply support the holding there made.

In *Frick v. Pennsylvania*, 268 U. S. 486, (October Term, 1924, No. 125), this Court said, at Page 492:

> "The Pennsylvania statute is a tax law, not an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax, but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the state. But, to impose either tax, the state must have jurisdiction over the thing that is taxed; and to impose either without such jurisdiction is mere extortion, and in contravention of due process of law."

The tax there was a succession tax. It is submitted that the analogy is complete and that a death transfer tax and an excise tax on transfers of property *inter vivos* stand on the same footing with respect to the lack of power of a state to impose such tax on a foreign transfer.

In *First National Bank v. Maine,* 284 U. S. 312, among other things, it was held that an inheritance or succession tax was an excise tax which could not be imposed by more than one state. The Court there said, at Page 322:

> "We decided, pp. 488-492, that the Pennsylvania tax, in so far as it was imposed upon the transfer of tangible personality, having an actual situs in other states, was in contravention of the due process clause of the 14th Amendment. Upon a review of former decisions, it was held (1) that the exaction of a tax beyond the power of the state to impose was a taking of property in violation of the due process clause; (2) that while the tax laws of a state may reach every object which is under its jurisdiction, they cannot be given extra-territorial operation;***"

And further, at Page 328, the Court said:

> "We conclude that shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by one state only.
>
> "The question remains: In which state, among two or more claiming the power to impose the tax, does the taxable event occur?"

These authorities are controlling and easy of application to the present case. It must be borne in mind that under the facts in this case, with the single exception of the taxability which is claimed by Appellant for a receipt given by the brokers' Florida employees to a customer, who hands them stock to be sold and as to which transaction our contention is that no title transfer takes place, the taxability of the various documents is entirely dependent upon there being an actual sale or transfer of the stock outside of the State. Also, the Appellant concedes that where a sale is made outside of the State for a Florida customer in the manner shown

here, only one of the various documents which he contends are taxable shall bear the tax. The tax is one the amount of which would be measured by the foreign transfer. These circumstances show beyond any question that the effect of the taxation, if it could be imposed in the manner contended for by the Appellant, would be the levying of an excise tax by the State of Florida upon a taxable event occurring outside of its territorial limits, and a consequent taking of property of the Appellees beyond the power of the State and, therefore, without due process of law.

2. The tax levied under such circumstances would deprive Appellees of liberty without due process of law. The Constitution guarantees to Appellees the right, privilege and liberty to be free in the enjoyment of their faculties, including the right to pursue their businesses and to enter into all contracts which may be proper, necessary and essential to their carrying out to a successful conclusion their proper business purposes. This liberty will be denied them if these papers made in Florida, which have incidental and collateral reference to contracts made for their customers, outside of the State of Florida for the sale of stock, and to extra-territorial sales and transfers of stock made on their behalf, are construed to be subject to the excise tax under the Florida Act.

Allgeyer v. Louisiana, 165 U. S. 578;
St. Louis Cotton Compress Co. v. Arkansas, 260 U. S. 346.

In the Louisiana and Arkansas cases it was attempted through a state statute to levy a tribute on the making of certain insurance contracts outside of those states. Here the State of Florida through the interpretation of its stamp tax law as placed thereon by its Comptroller acting as an administrative board, is attempting to receive a tribute upon contracts made outside of this State for the sale of stock, and upon actual sales and transfers of stock which are made and completed outside of this State. The holding in *Allgeyer v. Louisiana, supra*, is conclusive on the point that any incidental communications or memoranda

which may be written or used in the State, which are merely incidental and collateral to the foreign transaction, cannot be made the object of taxation by virtue of and because of the foreign transaction.

The Court in the Allgeyer case, in the opinion by Mr. Justice Holmes, said at Page 592:

> "In the privilege of pursuing an ordinary calling or trade and of acquiring, holding, and selling property must be embraced the right to make all proper contracts in relation thereto, and although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the state as contained in the statutes, yet the power does not and cannot extend to prohibiting the citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction; nor can the state legally prohibit its citizens from doing such an act as writing this letter of notification, even though the property which is the subject of the insurance may at the time when such insurance attaches be within the limits of the state. The mere fact that a citizen may be within the limits of a particular state does not prevent his making a contract outside its limits while he himself remains within it. *Milliken v. Pratt*, 125 Mass. 374 (28 Am. Rep. 241); *Tildon v. Blair*, 88 U. S. 21 Wall 241 (22: 632). The contract in this case was thus made. It was a valid contract, made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state. As the contract was valid in the place where made and where it was to be performed, the party to the contract upon whom is devolved the right or duty to send the notification in order that the insurance provided for by the contract may attach to the property specified in the shipment mentioned in the notice, must

have the liberty to do that act and to give that notification within the limits of the state, any prohibition of the state statute to the contrary notwithstanding. *The giving of the notice is a mere collateral matter; it is not the contract itself, but is an act performed pursuant to a valid contract which the state had no right or jurisdiction to prevent its citizens from making outside the limits of the state.*

"* * * Any act of the state legislature which should prevent the entering into such a contract, or the mailing within the state of Louisiana of such a notification as is mentioned in this case, is an improper and illegal interference with the conduct of the citizen, although residing in Louisiana, in his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the state."

The state restriction sought to be imposed in the Allgeyer case was in the form of a penalty in a round sum termed a fine. The later case cited, *St. Louis Cotton Compress Co. v. Arkansas, supra,* established that such a restriction cannot be imposed in the form of a tax.

It is apparent, and a point to be noted in connection with this case, that no question of state regulation or police power control of matters or actions of persons is raised or urged as a basis for the appellant's contention here respecting the Florida Act.

3. The tax would constitute a burden on interstate commerce. The business of the Appellees, as disclosed in this case, constitutes commerce between the states. The tax is sought to be imposed on the messages which are transmitted by private telegraph wire between the New York offices of the firms and their Florida branch offices.

The leased private wire is a facility which, if used through the public telegraphic systems, could not be subjected to such taxation.

Western Union Teleg. Co. v. Foster, 247 U. S. 105.

We submit that where the Appellee brokerage firms, through the facilities in question, secure the transmission between states of quotations, and other messages and communications with reference to their business, such information and messages are an indispensable part of their business and constitute commerce between the states to the same extent that ordinary messages by telephone and telegraph companies are so classed.

Furthermore, the shipment of stocks, as is done with relation to a portion of the business of the firms conducted for their Florida customers, is interstate commerce. We take this position notwithstanding the case of *Ware & Leland v. Mobile County*, 209 U. S. 405, and the cases which follow it, in which it was held that such brokerage business with respect to trades in cotton and other commodity futures, was not interstate commerce.

In a search which has been exhaustive, but which we concede is by no means complete, we have not found any case in point deciding whether or not such brokerage business on trades of stocks listed on Stock Exchanges is interstate commerce. A clear distinction, however, which exists between the case of trading in stocks and the case of trading in commodity futures is that in the former the trade or contract made on the floor of the Exchange is always followed promptly by actual delivery, and there is no dealing in or assignment of the contract for the delivery of the stock, whereas, in the case of the commodity futures, the subject of trade, as a practical matter, is the contract itself. It is true that the commodity futures contracts call for delivery at a future date, but the delivery called for is usually to take place at a distant date, and the practice is to trade in the contracts themselves, by purchase, sale or assignment thereof, an unlimited number of times before the time set for the actual delivery of the commodity.

4. The Florida Act, as applied to the circumstances of this case, is unconstitutional and void by reason of the excessive penalties provided therein.

Under an analogous statute shown to have such an effect, this contention was successfully made in the case of *Ex Parte Young*, 209 U. S. 123, and the statute was held to be unconstitutional and void in that case on that ground. The case concerned railroad rates, and the penalty provided for disobedience of the Act was a $5,000.00 fine, or imprisonment in the state prison not exceeding five years, or both. While the amount of the fine and the length of imprisonment provided as penalties in that case were greater than the ones provided in the Florida Act, the difference is one only of degree, and we submit that the amount of the fine and the length of the imprisonment penalty provided for in the Florida Act are more than sufficiently grave to bring this case squarely within the principle as thus announced in *Ex Parte Young*, since in the usual course of business of each of the Appellee firms, the employees of their Florida offices could become subject to daily fines exceeding, by conservative estimate, more than $20,000.00, and imprisonment sentences totalling more than ten years for each day's infringement.

POINT FIVE.

The Florida Act, if construed as contended for by the Appellant, is violative of the Constitution of the State of Florida.

The argument made under this heading is applicable to those points upon which the Appellant relies, which are specified above in the opening of the argument under our Point Four.

We submit that if the construction contended for by the Appellant is given to the statute, it is thereby rendered unconstitutional under the Constitution of the State of Florida in the respects set forth below:

1. The Act is a violation of the due process provision of the Florida Constitution (Section 12 of the Declaration of Rights of Florida), which guarantees that no person shall be deprived of life, liberty or property without due process of law. What has been said above in POINT FOUR in discussing that question with reference to the Federal Constitution is equally applicable here.

2. The Act thus construed is void as being in conflict with the First Section of Article IX of the Constitution of Florida, which provides:

> "The Legislature shall provide for a uniform and equal rate of taxation,****; and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal,***."

To levy and collect the taxes on the construction contended for by the Comptroller, where the only basis for such taxes are the contracts, sales and transfers which are made and take place outside the State of Florida, by requiring the placing of stamps on incidental and collateral written records of such foreign transfers, is the levying of a property tax on such records, since there is no transaction within the State of Florida subject to an excise tax in that connection. The

title of the Act is not controlling as to the nature of the tax.

St. Louis Cotton Compress Co. v. Arkansas, supra, 260 U. S. 346.

The tax sought to be collected, however, is one the amount of which is not based upon any intrinsic or other actual value of the "memorandum" or "record" or paper on which it is sought to enforce the placing of stamps, but is a tax which, as to its amount, is gauged by the kind and number of shares or certificates of stock involved in a sale made outside the State of Florida, and to which the writing or paper in question incidentally makes reference. No further argument or explanation is necessary to show that such a method of valuation of a paper or writing is not a just valuation of the property taxed, and is in utter disregard of the constitutional guaranty of equal rate of taxation. That this is true is shown by *People ex rel. Hatch v. Reardon, supra,* where in the opinions of the New York Courts dealing with that case, the Appellate Division (97 N. Y. S. 535, 541) and the Court of Appeals (77 N. E. Rep. 970, 974), in distinguishing the stock transfer tax there from a property tax, took the view, that as a property tax it would be violative of the State constitutional guaranty of equal rate of taxation by reason of the valuation basis shown above.

The constitutional provisions for equal rate of taxation, and for just valuation by which the same is brought about are mandatory, and the disregard of such requirements is, under the decisions of the Florida Court, a violation of the State Constitution.

Jordan v. Duval County, 68 Fla. 48, 66 Sou. Rep. 298.
Graham v. West Tampa, 71 Fla. 605, 71 Sou. Rep. 926.
Sparkman v. State, 71 Fla. 210, 71 Sou. Rep. 34.
Camp Rhosphate Co. v. Allen, 77 Fla. 341, 81 Sou. Rep. 503.

Louisville & N. R. Co. v. Amos, 98 Fla. 350, 123 Sou. Rep. 745.

Walter C. Hardesty, Inc. v. Town of Holly Hill, 100 Fla. 1130, 131 Sou. Rep. 134.

3. The statute, if construed as contended for by the Appellant, likewise violates the Sixteenth Section of Article III of the Florida Constitution, by which it is provided that Acts of the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title. The title of the Act is as follows:

> "An Act Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax."

It appears from the title that the tax thereby imposed is described as an excise tax. The application of this Act to sales and transfers made in the State of Florida is the levying of an excise tax as distinguished from property tax. The Act thus imposes an excise tax on the making of certain documents and, by the third paragraph of its Schedule A, on certain transfers.

Since the State is without power to levy an excise tax on a transfer or transaction which does not take place within its territorial limits, a tax imposed on some incidental feature of such a foreign transfer must be a property tax, if it is a tax at all. To construe the third paragraph of Schedule A of the Act to levy such a property tax, while other paragraphs of the Schedule patently impose an excise tax, results in the Act embracing a plurality of subjects, in violation of the provision mentioned. In that event, as shown by the decision of the Florida Court, in *Smith v. Chase, Sheriff*, 91 Fla. 1044, 109 Sou. Rep. 94, the State constitutional provision is further violated by the consequent failure of the title of the Act to disclose the subject thereof.

These local questions and questions of state constitutionality are proper subjects for consideration and determination in this case, notwithstanding that the initial basis of its

jurisdictional position as a case for a statutory Court, under Section 266 of the Judicial Code, is the question of Federal constitutionality upon which the statute is attacked.

Louisville & Nashville Railroad Co. v. Garrett, supra, 231 U. S. 298, 303, 304.

LAST POINT.

In conclusion, it is submitted that the decree of the District Court should be affirmed.

Respectfully submitted,

FRANK B. SHUTTS,
CRATE D. BOWEN,
CHARLES A. CARROLL,
Counsel for Appellees.

APPENDIX

The Florida Documentary Stamp Tax Law (Chapter 15787, Laws of Florida 1931, Ex. Sess.; Section 1279, Sub-Sections 111 et seq., Comp. Gen. Laws of Florida, 1934 Supp.) is set forth in full below, to-wit:

AN ACT Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each $100 of the face value or fraction thereof, 10c, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10c: Provided, that where a certificate is issued without face value, the tax shall be 10c per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10c on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each share: Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate

or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10c. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor, 10c: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10c for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10c each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10c.

Section 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have

power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the tax payer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

Section 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collecting stamp

taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

Section 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps are herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

Section 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

Section 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

Section 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

SUPREME COURT OF THE UNITED STATES.

No. 944.—October Term, 1933.

J. M. Lee, as Comptroller of the State of Florida, Appellant, *vs.* John P. Bickell, et al., Appellees.	Appeal from the District Court of the United States for the Northern District of Florida.

[May 21, 1934.]

Mr. Justice Cardozo delivered the opinion of the Court.

The appellees, complainants in the court below, have brought this suit against the appellant, the Comptroller of the State of Florida, to restrain the enforcement of a Florida statute for the levy and collection of stamp taxes upon the documents described in the bill of complaint.

Their contention has been and is that the statute, properly construed, does not apply to the transactions stated in the bill, and that, if so applied, it is in conflict with the due process and commerce provisions of the Constitution of the United States. Amendment XIV; Art. I, Sec. 8.

A District Court of three judges granted an interlocutory injunction (5 F. Supp. 720), which thereafter was made permanent. The case is in this court upon an appeal by the state Comptroller. Judicial Code, sec. 266; 28 U. S. C., sec. 380.

The Florida statute (Chapter 15,787, Laws of Florida, 1931) imposes a stamp tax upon all bonds or certificates of indebtedness issued in Florida; upon each original issue of certificates of stock; and upon all sales of stock or certificates of stock, agreements to sell, memoranda of sales or deliveries, or transfers of title, the stamps to be placed upon the certificates if the assignment of the certificate is to a person named therein, and upon a written memorandum which the seller is required to execute and deliver to the buyer if there is either an agreement to sell or a transfer of title by delivery of a certificate assigned in blank. The

provisions of the statute so far as material are printed in the margin.*

The appellees are stockbrokers engaged in business in the City of New York with branch offices in Florida. Orders to buy or sell received from Florida customers are transmitted by the Florida branches, and are executed in New York in accordance with the customs of the Stock Exchange. The Comptroller does not contend that any document signed by the brokers in New York is subject to the tax. To the contrary there is a concession that the stamp taxes applicable to such transactions are those imposed by the New York statute (New York Tax Law, § 270) and by a statute of the United States (26 U. S. C. § 901 [3]), which are substantially the same as the stamp tax law of Florida. What the Comptroller contends is this, that after the transaction is executed in New York, where certificates and memoranda are stamped under the New York and federal statutes, there are certain supplementary papers, copies of the original memoranda, or receipts, or entries in the books, which are signed by the managers or employes of the Florida branches, or on occasion by the customers. These, it is said, are memoranda of sales or deliveries within the meaning of the Florida statute. A tax is also claimed where a written order for the sale of shares is signed by a Florida customer and delivered to the Florida agent for transmission to the central office.

*"On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10¢; and where such shares are without par or face value, the tax shall be 10¢ on the transfer or sale or agreement to sell on each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers."

The application of the statute to these and similar situations will be determined more easily when the course of business, first in respect of purchases, and next in respect of sales, has been traced in greater detail. What that course of business is appears very clearly from the stipulated facts.

Upon the transmission to New York of an order for the purchase of shares of stock and after the execution of the order upon the floor of the Exchange, the buying and selling brokers sign and exchange what is known as an "exchange contract." There is no contention by the Comptroller that this is taxable in Florida. When the shares are delivered, the rules call for the exchange of what is known as a "sales ticket," a memorandum of the transaction, which bears the stamps required by the Federal Stamp Tax Act and by the statute of New York. 26 U. S. C. § 901 [3]; New York Tax Law, § 270. There is no contention that the sales ticket is taxable in Florida. After the execution of the order, the New York office reports the transaction by telegraph over its private wire to the Florida branch, where an employe receives the telegram and reduces it to writing. This copy according to the contention of the Comptroller is a memorandum of sale within the meaning of the Florida statute, and must be stamped accordingly. Another copy of the telegram is commonly, but not invariably, delivered by the branch office to the customer. This too is claimed by the Comptroller to be a taxable memorandum, though a stamp is not required if one has been affixed to the copy retained for the office files. In addition to the telegraphic notice to its Florida representatives, the New York office follows the practice of sending notice of the purchase by mail directly to the customer. No stamp is required for this notice, which is signed and transmitted in New York. Finally when the purchase has been completed by delivery, there are times when the New York office, instead of holding the certificates for the account of its Florida customer, forwards them to him by registered mail. When this is done a form of receipt is enclosed, which the customer is asked to sign. The Comptroller contends that this receipt, if signed in Florida, is subject to a stamp tax as a memorandum of delivery.

The course of dealing upon an order for the sale of shares does not differ in essentials, so far as the present subject of inquiry is concerned, from that upon an order to buy. By concession the

"exchange contracts," and the "sales tickets" are not taxable in Florida. Taxes are claimed, however, upon the telegraphic report of the sale when written out by employes in the Florida office or by them transmitted in writing to the Florida customer. Taxes are claimed also when the Florida branch delivers a receipt to the customer for certificates to be sold, or receives a written order to sell, the theory being that this last is an agreement to sell within the meaning of the statute.

If stamp taxes due in connection with any of these memoranda are not affixed when payable, they must be affixed, in the view of the Comptroller, to the corresponding entry upon the books of account, but the tax is payable only once in respect of the same transaction, duplicate documents or entries being held to be exempt.

The failure to pay the tax by affixing and cancelling stamps of the prescribed value is declared to be a crime and is punishable accordingly.

Upon these facts the District Court held that the complainants, who were nonresidents of Florida, were without an adequate remedy at law, and that the threatened acts of the Comptroller, if illegal, should be restrained by a court of equity. As to this we are not in doubt, the multiplicity of actions necessary for redress at law being sufficient, without reference to other considerations, to uphold the remedy by injunction. *Wilson* v. *Illinois Southern R. Co.*, 263 U. S. 574; *Hill* v. *Wallace*, 259 U. S. 44, 62. The taxes claimed by the Comptroller and resisted by the complainants exceed the amount necessary to sustain the federal jurisdiction. Several hundred transactions are affected every day.

The District Court held also (1) that the writings signed in Florida were not agreements or memoranda of sale or delivery within the meaning of the Florida statute; and (2) that the effect of a different construction would be to bring the statute into conflict with the Fourteenth Amendment. The two grounds are not sharply separated in the opinion of the District Court, the second being brought in to reinforce the first. We propose in what follows to keep them distinct.

First. The evidence drawn from the wording of the statute combines with the administrative interpretation of like statutes in other jurisdictions and with the practical interpretation of this one for nearly two years in Florida to exclude the transactions from the operation of the tax.

The scheme of the statute is to tax the transfer of shares of stock, whether executory or executed, by stamps to be affixed to those writings, and those only, which in a practical sense are the repository of the agreement or the instruments or vehicles for the ensuing change of title. Thus, if a transfer has been made and the only evidence of its making is on the books of the corporation, it is on such books and no where else that the stamps are to be placed. The statute does not say or mean that they shall be placed also upon the memoranda of the transaction in the office of the brokers or that there shall be an election to affix them either at one place or the other. Again, "if the change of ownership is by transfer of the certificate" to a stated assignee, it is on the certificate and no where else that the stamps are to be placed. Only in two classes of cases is a different rule prescribed. "In case of an agreement to sell" (as distinguished from an executed transfer) "or where the transfer is made by delivery of the certificate assigned in blank," then a memorandum in a prescribed form must be executed by the seller, and this prescribed memorandum is the one to be stamped. In brief, the memorandum of sale or delivery to be taxed under the statute is not every note or entry made in Florida recording a transaction elsewhere. It is the kind of note or entry exacted by the statute where there is an executory agreement or a transfer by delivery, a note or entry to be handed by the seller to the buyer as an evidence of contract or as a muniment of title. If another view were to prevail, the tax could be multiplied repeatedly as the product of the same transaction. Not only the first memorandum would be taxable, but every copy of a copy, and every entry of the transaction in one book or in many. There is significance in the unwillingness of the Comptroller to press his claim so far. Refusing to concede that he is not at liberty under the statute to tax as many entries as he can find, he has none the less chosen in the administration of his office to tax the same transaction only once. The choice supplies a gloss upon the intention of the law makers. It is an illuminating token that the memoranda to be taxed are the mandatory memoranda only, the customary sales tickets of the brokers, tickets subject to a tax in Florida if ancillary to a transaction consummated there, but free from that burden if signed and delivered somewhere else. In this instance the sales tickets were ancillary to a transaction consum-

mated in New York, were signed and delivered in that state, and when signed and delivered carried stamps in the amount required by the laws of New York and the laws of the United States. We perceive nothing in the law of Florida indicative of a purpose that other memoranda, not the repository of the contract nor exchanged between the parties, should be subject to a tax anywhere.

One finds it hard, indeed, to see how the collection of the tax would be workable as an administrative problem if a broker were free to choose between stamping his own copy of a document and stamping the duplicate delivered as a memorandum to his customer. The taxing officials could never learn through an inspection of the files whether the mandate of the statute had been followed or ignored. One of the major merits of a stamp tax is to make the evidence of payment visible and almost automatic. That benefit is lost if the collector is uncertain whether the document to be stamped is on the files of the taxpayer or in the possession of another. A court will be slow to hold that the lawmakers had in view a method of collection so awkward and unwieldy. To tax every copy may be oppressive. To tax any one of them indifferently is ineffective. The intention of the lawmakers was to tax a particular set of documents identified with certainty.

Like statutes outside of Florida have had administrative interpretation pointing to a like conclusion. By section 270 of the Tax Law of New York, a stamp tax is imposed upon "all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock . . . in any domestic or foreign association, company or corporation . . . whether made upon or shown by the books of the association, company, corporation or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final . . . ." The Attorney General of New York has ruled that this statute does not apply to an assignment in blank in New York for delivery to a purchaser in Canada under a sale previously executed upon a Canadian exchange. Opinions of Attorney General 1928, p. 125. Cf. *People ex rel. Hatch* v. *Reardon*, 110 App. Div. (N. Y.) 821, 832; aff'd 184 N. Y. 431; 204 U. S. 152. By a statute of the United States (Revenue Act of 1926, § 800, schedule A, subd. 3 as amended by the Revenue Acts of 1928 and 1932, 26 U. S. C. § 901 [3]), a

stamp tax is imposed upon sales or memoranda in almost the same words as those of the New York statute. Regulation No. 71, Article 36, of the Bureau of Internal Revenue, makes it clear that only the mandatory memorandum is required to bear a stamp. See also Article 35. Finally in Florida itself, the very statute now in controversy was ruled by the appellant's predecessor in the office of Comptroller to be inapplicable to these transactions or to others not to be distinguished. Counsel for the appellees, uncertain as to his clients' duty, put the case to the Comptroller, and received a favorable ruling. For nearly two years the statute was so administered till the present appellant, reaching out, it seems, for new sources of public revenue, found or thought he had found the evidence of an intention to tax a copy made in Florida of a memorandum in New York.

A word must be said in response to the suggestion that an order to sell, delivered by a customer in Florida to the manager of a Florida branch is an agreement to sell, and therefore subject to the tax. Clearly, we think it is nothing of the kind. It is a grant of authority by customer to broker, by principal to agent, revocable till executed, like agencies in general. There was no agreement to sell till the selling broker and the buying one came together on the floor of the stock exchange in New York, and made a contract there.

The directive force of all these signposts of intention is little less than irresistible when the series is viewed together. The meaning ascribed to the statute by the judges of the court below gives it coherence and simplicity. The meaning read into it by the Comptroller splits it into jarring fragments, one a plan for the taxation of the operative documents, all executed in one place, and the other a plan for the taxation of casual reports and copies, executed in another. These plans, to be sure, might be held to coëxist if the purpose to combine them were unmistakably disclosed, yet disclosure short of that would be too weak to make the combination plausible. The Florida decisions tell us that doubts, if nicely balanced, will be resolved in favor of the taxpayer. *State ex rel. Packard* v. *Cook*, 108 Fla. 157; *State ex rel. Rogers* v. *Sweat*, 152 So. 432; cf. *Burnet* v. *Guggenheim*, 288 U. S. 280, 286. There is little need to summon to our aid that canon of construction invoked by the complainants. The meaning of the statute as we read it is too plain to be swayed by favor or disfavor for one class or another.

Second. The taxation of the documents being without warrant in the statute, there is no duty to determine whether the constitution would be infringed if the meaning were something else. As to that we do not indicate an opinion, even by indirection. It will be soon enough to set a value upon the arguments of counsel when a statute is before us that requires us to choose between them. At the same time the parties to the controversy should have adequate protection in the possible contingency of a decision by the state Supreme Court at variance with ours in respect of the meaning of the statute, a meaning that will then be declared with ultimate authority. *Hartford Accident & Indemnity Co.* v. *Nelson Mfg. Co.*, February 5, 1934, — U. S. —. There should be an appropriate opportunity in such circumstances to terminate or modify the restraints of the decree. There should also be an opportunity to renew the litigation in respect of the issue of constitutional validity, now held to be irrelevant. The reservations proper to that end will follow the practice indicated in *Glenn* v. *Field Packing Co.*, 290 U. S. 177, and *Wald Transfer & Storage Co.* v. *Smith*, 290 U. S. 602.

In conformity with those decisions, the decree will be modified by striking therefrom any conclusion of law or other adjudication as to the validity of the Documentary Stamp Tax Act of Florida under the Constitution of the United States, and by adding a provision, that the parties to the suit or any of them may apply at any time to the court below, by bill or otherwise, as they may be advised, for a further order or decree, in case it shall appear that the statute has been then construed by the highest court of Florida as applicable to the transactions in controversy here. With this modification the decree will be affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.